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ORIGINAL



January 11, 2002

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

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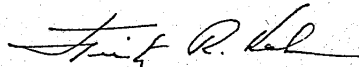
Dear Secretary Williams:

Enclosed for filing in each of STB Finance Docket No. 33995, SF&L Railway, Inc.--Acquisition and Operation Exemption--Toledo, Peoria and Western Railway Corporation, and STB Finance Docket No. 33996, Kern W. Schumacher and Morris H. Kulmer--Continuance in Control Exemption--SF&L Railway, Inc., are the originals and ten copies of the redacted and confidential versions of the Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer.

Additional copies off this letter and of the Reply are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed stamped and self-addressed envelope.

If you have any question concerning this filing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

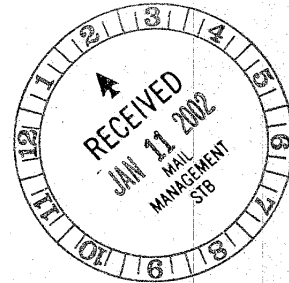
enc.

cc: Gordon P. MacDougall, Esq.  
Louis E. Gitomer, Esq.  
William A. Mullins, Esq.  
Michael J. Van Wagenen, Esq.

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REDACTED VERSION - AVAILABLE TO PUBLIC

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



STB Finance Docket No. 33995

SF&L RAILWAY, INC.  
--ACQUISITION AND OPERATION EXEMPTION--  
TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SF&L RAILWAY, INC.

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REPLY  
OF  
SF&L RAILWAY, INC., KERN W. SCHUMACHER  
and MORRIS H. KULMER

ENTERED  
Office of the Secretary

JAN 11 2002

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Public Record

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KERN W. SCHUMACHER and  
MORRIS H. KULMER

Dated: January 11, 2002

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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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STB Finance Docket No. 33995

SF&L RAILWAY, INC.  
--ACQUISITION AND OPERATION EXEMPTION--  
TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SF&L RAILWAY, INC.

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REPLY  
OF  
SF&L RAILWAY, INC., KERN W. SCHUMACHER  
and MORRIS H. KULMER

SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher and Morris H. Kulmer (together "Applicants"), pursuant to 49 C.F.R. 1104.13(a) and the Decision of the Board, Secretary Williams, served December 21, 2001,, reply to the Supplement filed, December 12, 2001, by Keokuk Junction Railway Co. ("KJRY") and to the Supplement filed, January 7, 2002, jointly by County of McDonough, City of Macomb and Joseph Szabo, Illinois Legislative Director for the United Transportation Union (collectively "UTU-IL") to their respective petitions to revoke Applicants' Verified

Notices of Exemption in these proceedings, as follows:

Pursuant to 49 U.S.C. 10502(d), one may ask the Board at any time to revoke a previously authorized exemption by asserting that regulation is necessary to carry out the Rail Transportation Policy, 49 U.S.C. 10101. The burden of proof, however, is on the party seeking the revocation, KJRY and UTU-IL in these proceedings. It was incumbent upon KJRY and UTU-IL to establish, based upon reasonable, specific concerns, to demonstrate that reconsideration of the exemptions is warranted and that regulation of the transaction is necessary. STB Docket No. AB-477 (Sub-No. 3X), Owensville Terminal Company, Inc.--Abandonment Exemption--In Edwards and White Counties, IL, and Gibson and Posey Counties, IN, served December 2, 1998; STB Finance Docket No. 33644, Tongue River Railroad Company, Inc.--Acquisition and Operation Exemption--Tongue River Railroad Company, served November 13, 1998; STB Finance Docket No. 33438, Alabama & Gulf Coast Railway, LLC-Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, served September 11, 1998.

KJRY and UTU-IL failed to meet their burden of proof. While perfunctorily paying obeisance to the statutory standards, neither their petitions to revoke Applicants' Verified Notices of Exemption nor their supplements explicate why regulation of the transactions — putting SF&L to the time and expense of filing an application, pursuant to 49 U.S.C. 10901 and 49 C.F.R. 1150.1, et seq., and Messrs. Schumacher and Kulmer, pursuant to 49 U.S.C. 11324 and 49 C.F.R. 1180.0, et seq. -- would advance any of the goals and objectives of the Rail Transportation Policy.

I.

KJRY FAILED TO MEET ITS BURDEN OF PROOF.

A.

KJRY's representations reflect its owner's pique at having failed to acquire the La Harpe-to-Peoria line.

The Supplement filed by KJRY, as its Petition to Revoke, needs to be placed in context. While the pleadings repeat *ad nauseam* the shibboleth that SF&L has no intention of operating the La Harpe-to-Peoria railroad line, KJRY knows better than that. As Mr. Steven J. Van Wagenen, Assistant Vice President of the SF&L, attests in his Verified Statement, Attachment A hereto,<sup>1</sup> he met last November with representatives of Pioneer Railcorp, the holding company which controls KJRY and about a dozen other shortline railroads. The purpose of his call upon them was to apprise them that SF&L had notified RailAmerica, Inc., that it no longer wished to have the line operated by the Toledo, Peoria and Western Railroad Corporation ("TP&W"), as its contract operator, and that SF&L itself was going to render service on the line. SF&L began operating the line on December 12, 2001, and has been operating the line since. A copy of a letter from RailAmerica to KJRY, dated December 12, 2001, confirming that the change in the operation of the line had

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<sup>1</sup> In addition to the Verified Statement of Steven J. Van Wagenen, attached hereto, KVR, as part of its presentation, relies upon the Verified Statements of Kern w. Schumacher, Morris H. Kulmer and Michael J. Van Wagenen, attached to Applicants' Reply, filed March 26, 2001. In sharp contrast, neither KJRY's Petition to Revoke, filed March 6, 2001, nor its Supplement, filed December 12, 2001, includes anyone's sworn or verified statement. KJRY's entire case consists of counsels' contrived arguments.

occurred, is attached as Attachment B, and a copy of General Order No. 01-35, dated December 12, 2001, advising TP&W's employees of the commencement of SF&L's operations is attached as Attachment C.

KJRY evident hostility to SF&L can best be explained by the fact that Pioneer Railcorp itself had sought to buy the La Harpe-to-Peoria railroad line and still has aspirations to acquire it. In its responses to SF&L's first discovery requests, Attachment D hereto, KJRY acknowledged that, before the line was sold to SF&L, Pioneer Railcorp had offered to pay       million to acquire the TP&W's west-end, from Hollis, IL (beginning of TP&W's ownership)

See,

document number KJRY 0012.

Having lost out in its bid to acquire the La Harpe-to-Peoria railroad line, Pioneer Railcorp has had KJRY do everything within its power to sabotage SF&L's efforts successfully to operate the line. Mr. Van Wagenen explains in his Verified Statement that the local traffic on the line is sparse, amounting to no more than about 800 carloads a year. On its face, that is insufficient traffic to sustain operations on a 71.5-mile railroad line. What is key to being able to keep the line going is the traffic received from or delivered to KJRY, some 3,600 carloads a year. Because of the importance of the KJRY traffic, Mr. Van Wagenen last summer tried to establish an interchange arrangement at La Harpe between KJRY and SF&L as a first step in establishing a working relationship between the two railroads. He, however, received no response from KJRY until, on July 17, 2001, Mr. B. Allen Brown, identifying himself as the Chief



Operating Officer of Pioneer Railcorp, left a voicemail message on Mr. Van Wagenen's telephone in which, in part, he declared, "We don't even recognize you have the right to be asking for it."

In KJRY's response to Interrogatory No. 5(b) of Applicants' initial discovery requests, attached as Attachment D, KJRY acknowledged that it had been approached by SF&L to sign an interchange agreement and that KJRY had declined to do so.

Mr. Van Wagenen again attempted to establish an interchange arrangement between KJRY and SF&L at La Harpe at the time of his call upon the representatives of Pioneer Railcorp in November of 2001, but that, too, came to nothing.

In the meantime, as we shall relate in greater detail below, KJRY has been stirring up shippers on the La Harpe-to-Peoria railroad line, as well as some situated on its own line, and has been providing them with the drafts of letters to be sent to the Board ascribing to SF&L's corporate affiliation with A&K Railroad Materials, Inc., ("A&K") the alleged deterioration of service following SF&L's agreement to buy the line.

Then, on December 12, 2001, the very day it filed its Supplement, KJRY announced that it had bought TP&W's railroad line between La Harpe and Lomax, IL, and the assignment of TP&W's trackage rights on The Burlington Northern and Santa Fe Railway Company ("BNSF") between Lomax and Fort Madison. See, STB Finance Docket No. 34143, Keokuk Junction Railway Co.-- Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation. We do not know what Pioneer Railcorp's motives may have been in acquiring TP&W's La Harpe-to-Fort Madison railroad line. We can only surmise that this is

just another means whereby Pioneer Railcorp will be trying to put SF&L out of business. Certainly, KJRY no longer will require SF&L to haul its cars to and from interchanges with BNSF and Union Pacific Railroad Company ("UP") at Peoria or some other station on the La Harpe-to-Peoria railroad line. KJRY will be able to hold on to the traffic and effect direct interchanges with BNSF and UP at Fort Madison.

Thus at the very time that KJRY irresponsibly and recklessly charges SF&L with having purchased the La Harpe-to-Peoria railroad line, not with any intention of operating it, but simply to abandon it for the value of its track materials, KJRY is doing its level best to try to bring about that very result, to undermine the same service which it contends before the Board is critical to its survival. This is not idle speculation on our part. We note that, at page 21 of its Supplement, KJRY acknowledges that it is seeking the abandonment of the line so that "a company such as KJRY, who is committed to running a shortline railroad, could make an OFA and purchase the line [footnote omitted]."

The Board should not let itself be persuaded by what are obviously no more than sour grapes arguments advanced on behalf of a spurned suitor.

B.

KJRY again impugns the Board and  
ICC's past abandonment decisions.

At pages 6-7 of its Supplement, KJRY purports to be able to divine SF&L's intention in acquiring the La Harpe-to-Peoria railroad line from the past decisions of the Board, as of the

Interstate Commerce Commission ("ICC"), authorizing the abandonment of certain lines of SF&L and other railroad affiliates of A&K, detailed at great length, at pages 8-13 of KJRY's Petition to Revoke, filed March 6, 2001. In effect, KJRY charges the Board and the ICC with having erred in authorizing those abandonments, implying that, since they were sought by SF&L or other A&K affiliated railroads, the abandonment requests should have been denied by the agency, notwithstanding that the evidence in each of the proceedings fully supported the grant of authority. This amounts to a collateral attack by KJRY upon the actions of the agency, and, as such, it is inappropriate and should not be countenanced. See, Callanan Road Improvement Co. v. United States, 345 U.S. 507, 512 (1953); Popp Telecom v. American Sharecom, Inc., 210 F.3d 928, 941 (8<sup>th</sup> Cir. 2000).

In our Reply, filed March 26, 2001, we called KJRY's bluff and, beginning at page 8, asked it to identify a single decision in which SF&L or another A&K affiliated railroad had been found by the Board or ICC to have failed to provide adequate service, in violation 49 U.S.C. 11101. We challenged KJRY to cite to a single Board or ICC decision in which SF&L or another A&K affiliated railroad had been found to have imposed unreasonable charges, in violation of 49 U.S.C. 10701. We called upon KJRY to cite to a single decision in which SF&L or another A&K affiliated railroad had been found by the Board or the ICC to have discontinued rendering service on any one of its lines without agency approval, in violation of 49 U.S.C. 10903. We exhorted KJRY to cite to a single Board or ICC decision, other than the 1.7-mile line sought by the City of Hillsboro, TX, in Docket No.

AB-448 (Sub-No. 1X), SF&L Railway, Inc.--Abandonment Exemption--  
In Ellis and Hill Counties, TX, served July 30, 1996, in which  
the line authorized for abandonment by SF&L or another A&K  
affiliated railroad had sufficient traffic that anyone came  
forward to subsidize continued operation of the line or to buy it  
so as to operate it for at least two years' time, pursuant to 49  
U.S.C. 10904.

KJRY in its Supplement came up dry; it was unable to refer  
to a single instance in which SF&L or another A&K affiliated  
railroad had been found by the Board or ICC to have acted  
inappropriately or to have secured its abandonment authorization  
improperly.<sup>2</sup> KJRY's contrived charge that SF&L's intent to  
abandon the La Harpe-to-Peoria railroad line can be discerned  
from the earlier decisions of the Board or ICC authorizing the  
abandonment of certain lines of SF&L or other A&K affiliated  
railroads is made of whole cloth; it simply fails to withstand  
analysis.

C.

KJRY misrepresent the holdings in the  
Roaring Fork and Lancaster proceedings.

In its desperate effort to establish that SF&L's intent in  
acquiring the La Harpe-to-Peoria railroad line was to abandon it,  
KJRY misrepresents the holdings in the Decisions of the Board in  
Docket No. AB-547X, Roaring Fork Railroad Holding Authority--

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<sup>2</sup> It is highly significant that, whereas at page 3 and  
elsewhere in its Petition to Reject, filed March 6, 2001, KJRY  
accused Applicants of having acquired "rail lines for the purpose  
of downgrading service and imposing unreasonable charges," KJRY  
carefully avoids repeating such unfounded charges in its  
Supplement.

Abandonment Exemption--In Garfield, Eagle, and Pitkin Counties, CO, served May 21, 1999, aff'd, Kulmer v. STB, 236 F.3d 1255 (10<sup>th</sup> Cir. 2001), and of the ICC in Docket No. 33 (Sub-No. 71X), Union Pacific Railroad Company--Abandonment Exemption--In Lancaster County, NE, served September 28, 1992. In neither Decision did the agency hold, as KJRY incorrectly contends, that Applicants "are basically in the business of scrapping rail lines and for that reason has refused to allow [Applicants] to acquire rail lines under the Offer of Financial Assistance procedures." Candor should have compelled KJRY to concede that in both proceedings the agency's decision turned on the insufficiency of the freight traffic to sustain operations on the railroad line in question. In its Roaring Fork decision, the Board found:

Where, as here, the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient to traffic to enable the operator to fulfill its commitment to provide that service. The record in this case does not provide such assurance. [Citation and footnote omitted.]

Similarly, in its Lancaster decision, the ICC found:

Here, the only known shipper strongly opposes the OFA and appears committed to truck service. SF&L has not identified any other shipper or potential shipper that it will or could serve.

KJRY's misrepresentation of the agency's decisions in the Roaring Fork and Lancaster proceedings simply serves to underscore the hollowness of its opposition case.

Of course, KJRY is not the first opponent to have tried to malign SF&L or another A&K affiliated company by endeavoring to tie it to A&K's line of business of salvaging, restoring and selling used rails and other track materials. See, e.g., STB

Docket No. AB-397 (Sub-No. 5X), Tulare Valley Railroad Company--  
Abandonment and Discontinuance Exemption--In Tulare and Kern  
Counties, CA, served February 21, 1997; STB Docket No. AB-381  
(Sub-No. 1X), T and P Railway--Abandonment Exemption--In Shawnee,  
Jefferson and Atchison Counties, KS, served February 20, 1997;  
STB Docket No. AB-448 (Sub-No. 1X), SF&L Railway, Inc.--  
Abandonment Exemption--In Ellis and Hill Counties, TX, served  
July 30, 1996; Docket No. AB-425, Lone Star Railroad, Inc.--  
Abandonment and Discontinuance of Trackage Rights--In Wichita,  
Archer, Baylor, Knox, Haskell and Jones Counties, TX, served June  
9, 1995; Docket No. AB-381, T and P Railway--Abandonment--In  
Shawnee, Jefferson and Atchison Counties, KS, served April 27,  
1993. We are confident that KJRY will be no more successful in  
smearing SF&L because of its corporate ties to A&K than its  
predecessors were and that, as in the cited proceedings, the  
Board will not allow itself to be distracted by such a wholly  
irrelevant consideration in its weight of the merits of KJRY's  
revocation request.

D.

KJRY misrepresents the  
position of the states.

By KJRY's own count, SF&L and the other A&K affiliated  
railroads have operated in five states, California, Colorado,  
Illinois, Kansas and Texas. From among these, KJRY was able to  
come up with only the letter from James T. Quinn, Esq., Staff  
Attorney with the State of California Public Utilities  
Commission, dated November 3, 1998, attached as exhibit D to  
KJRY's Supplements, as it was attached to KJRY's Petition to

Revoke. It is not at all clear whether Mr. Quinn's letter was authorized by the California PUC or whether he was speaking for himself when he expressed his concern about the intent of A&K affiliated railroads in acquiring railroad properties. Mr. Quinn acknowledged in his letter that he became aware of A&K "in railroad abandonment applications concerning the Tulare Valley Railroad ["TVR"]." What he failed to mention, however, was that the California PUC participated in only one of these and that, in opposing the proposed abandonment that proceeding, Mr. Quinn tried his level best to besmirch TVR because of its corporate ties to A&K. The Board, however, refused to be diverted by Mr. Quinn's tactics and, but for the 6-mile Ultra-to-Ducor segment, granted TVR's abandonment request. STB Docket No. AB-397 (Sub-No. 5X), Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--In Tulare and Kern Counties, CA, served February 21, 1997.

As for Colorado, contrary to KJRY's representation, neither the State nor anyone authorized to speak on its behalf at any time indicated that the State recognized that SF&L and the other A&K affiliated railroads have abandoned lines rather than operated them. Colorado, through its Office of Business Development had tried to find a purchaser for the Tennessee Pass railroad line after the Board had disallowed its abandonment as part of its Decision in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996). TVR submitted a bid to purchase the line, but the Colorado Rail Panel of the Western Governors' Association recommended against its adoption because the panel deemed TVR's price to be too low and because TVR projected a loss in operating

the line, which the panel feared might lead TVR subsequently to seek the line's abandonment. TVR's evaluation of the business prospects for the line, of course, coincided with that of the Southern Pacific Transportation Company, which had sought the Board's authorization to abandon the Tennessee Pass railroad line. Colorado, in the meantime, has been able to find a purchaser for only a ten-mile segment of the line, STB Finance Docket No. 33622, Royal Gorge Express, LLC--Acquisition and Operation Exemption--Union Pacific Railroad Company, served July 15, 1998; the remainder of the line has been idle for five years' time. If, as KJRY disparagingly asserts, Applicants manifested little desire to operate an unprofitable shortline railroad on the Tennessee Pass railroad line, their judgment has been vindicated by the disinterest of others in undertaking a losing operation.

E.

KJRY reads Applicants' discovery responses selectively and quotes from them out of context.

(i) Affiliation with A&K. At pages 10-11 of its Supplement, KJRY would make it seem that only through its interrogatories did it learn of SF&L's corporate affiliation with A&K. Their relationship, however, was not kept secret; indeed, in their Reply, filed March 26, 2001, Applicants included an entire section on A&K, expressing great pride in the contributions the company has made over the years to freight and passenger railroads, large and small, foreign and domestic.

(ii) Due diligence. Beginning at page 11 of its Supplement, KJRY faults Applicants for their alleged lack of due



diligence preceding SF&L's purchase of the La Harpe-to-Peoria railroad line, citing it as an indicium of Applicants' design to have SF&L abandon, rather than operate, the line. KJRY conveniently overlooks the fact that, at the time of SF&L's purchase of the line, it was the intent of SF&L to have TP&W render service on the line as its contract operator, in SF&L's name and for its account. While the ownership of the railroad may have changed from time to time in the intervening years, TP&W has operated the line since at least 1887. Acquisition by T., P. & W. R.R., 124 I.C.C. 181, 183 (1927). It reasonably can be assumed that, by the time the La Harpe-to-Peoria railroad line was purchased by SF&L, TP&W had a pretty good idea of the volume and revenue of the traffic generated by the shippers on the line, as well as those on the KJRY whose shipments were hauled by TP&W, what operating plans it needs to have, what its personnel requirements were, what the business potentials of the line were and what earnings projections for the line might be made. Since TP&W was expected to be its contract operator, there was little point in having SF&L go over the same ground; SF&L could, and did, rely on TP&W's knowledge of the property which TP&W was going to continue to operate, albeit as SF&L's contract operator.

At page 12 of its Supplement, KJRY feigns surprise that SF&L was able to reach its conclusion to purchase the La Harpe-to-Peoria railroad line as quickly as it did, but, contrary to KJRY's assertion, SF&L was not "starting up a new 71.5 mile railroad." TP&W had done that more than a century ago, and SF&L very properly could, and did, rely on TP&W's experience gained in operating the property in the interim. Nor was there a need for

SF&L to conduct a physical inspection the line, which, at page 13 of its Supplement, KJRY finds so extraordinary, since SF&L's contract operator, TP&W, regularly had done so in rendering its operations on the line.

During the course of their intense, albeit abbreviated, negotiations preceding SF&L's purchase of the La Harpe-to-Peoria railroad line, RailAmerica had advised Applicants that the shippers on the line generated about 800 carloads of revenue freight annually and KJRY contributed another approximately 3,600 carloads annually. That translates to roughly 61 carloads of revenue freight per mile, per year for the 71.5 mile railroad line, half again as many as the 40 carloads per mile, per year frequently used as the yardstick for the minimum volume of traffic required to operate a railroad line profitably. See, STB Docket No. AB-246 (Sub-No. 2X), Yreka Western Railroad Company--Abandonment Exemption--In Siskiyou County, CA, served May 4, 1999; STB Docket No. AB-441 (Sub-No. 2X), SWKR Operating Co.--Abandonment Exemption--In Cochise County, AZ, served February 14, 1997. Thus, SF&L could, and did, buy the line with a reasonable comfort level that it could be operated profitably, as it had every intent to do.

(iii) Assets conveyed. At pages 13-14 of its Supplement, KJRY deems revealing of SF&L's intent to abandon, rather than operate, the La Harpe-to-Peoria railroad line SF&L's disinterest in buying the bridges, trestles and culverts on the property. To SF&L's mind, however, that simply made good sense since RailAmerica insisted on retaining the realty underlying the railroad line and refused to allow TP&W to quitclaim the title to

the land along with SF&L's purchase of TP&W's franchise to operate the line as a common carrier railroad and the improvements enabling SF&L to do so. Bridges, trestles and culverts are tied to the realty and their ownership properly should remain with whoever retains title to the realty.

Moreover, it should be noted that the May 31, 2001, Summary of Meeting, Exhibit A attached to KJRY's Supplement, from which KJRY excerpts snippets to try to prove its theory that SF&L had no desire to actually operate the La Harpe-to-Peoria railroad line but only to scrap it, was prepared by someone at RailAmerica and was part of the document production by RailAmerica in response to the discovery request of UTU-IL. The notes to which KJRY attributes such significance were those of some unidentified person and not anyone acting on behalf of Applicants.

(iv) Financing. At pages 14-15 of its Supplement, KJRY further evinces its convoluted reasoning in discerning SF&L's intent to abandon the La Harpe-to-Peoria railroad line from the fact that A&K provided the funds for SF&L's purchase of the property, secured by a note from SF&L to A&K. This was a perfectly normal transaction within a corporate family, and speculating about how SF&L will repay A&K, as KJRY gratuitously does, fails to render the financing suspect.

(v) Track material. At pages 15-16 of its Supplement, KJRY claims to find corroboration for its obsession that Applicants were only concerned about the scrap value of the La Harpe-to-Peoria railroad line and not its value as an operating property in a single-page document with the heading "Exhibit A Track Material," included in Exhibit G attached to KJRY's Supplement.

Although it was produced by Applicants, the document was not prepared by anyone of their behalf. Rather the document was that of RailAmerica and was intended as an attachment to the December 29, 2000, Bill of Sale by which RailAmerica agreed to sell to SF&L the rails, ties and other track materials to enable SF&L to render service on the line. TP&W retained the realty underlying the line, subject to a permanent and irrevocable easement grant to SF&L to permit it operate the line, conveyed by an Easement Grant, dated December 29, 2001. Thus, there was no corresponding Quitclaim Deed conveying the realty as there was a Bill of Sale for the line's improvements, itemized on the attachment.

To further support its convoluted reasoning about SF&L's intent with respect to the La Harpe-to-Peoria railroad line, KJRY quotes portions of the statements of Messrs. Schumacher and Kulmer in response to KJRY's request for admissions. Their complete statements on the subject were, as follows:

Applicants admit that Mr. Schumacher considered the salvage value of the Rail Line prior to approving SF&L's purchase of same, just as he considered the going concern value of the Rail Line prior to approving SF&L's purchase of the same.

\* \* \*

Applicants admit that Mr Kulmer considered the salvage value of the Rail Line prior to approving SF&L's purchase of the same, just as he considered the going concern value of the Rail Line prior to approving SF&L' purchase of the same.

KJRY purports to be puzzled how Applicants assessed the going concern value of the La Harpe-to-Peoria railroad line; however, as experienced operators of shortline railroads, Messrs. Schumacher and Kulmer had a fairly good idea of how much money might be made in handling an estimated 4,400 carloads of revenue

freight on the line. Moreover, TP&W knew exactly the amount of revenue it derived in handling the traffic for each of the shippers on the La Harpe-to-Peoria railroad line and in hauling the cars received from and delivered to KJRY, as well as its costs in operating the line,<sup>3</sup> and these were among the matters which were discussed with Applicants' representative during the course of the negotiations leading to the December 29, 2000, purchase by SF&L of the property.

(vi) Implementing agreements. At page 16 of its Supplement, KJRY inexplicably finds an intent by SF&L to abandon the La Harpe-to-Peoria railroad line which it had just purchased in a single sentence in a 19-page draft Service Agreement, attached as Exhibit H to KJRY's Supplement, obligating TP&W not to oppose its action in the event SF&L were to determine to abandon all or any portion of the line. Such a provision is commonplace in agreements between railroads, and nothing nefarious can be ascribed to it, as KJRY endeavors to do.

To support its contorted position, KJRY extracts a partial quote from Applicants' counsel's letter of May 10, 2001, Exhibit F attached to KJRY's Supplement, sent in response to KJRY's counsel's request for clarification of certain of Applicants' responses to KJRY's interrogatories. The entire paragraph reads, as follows:

Finally, with respect to the rights of SF&L, TP&W and/or RailAmerica, Inc., to force, support or oppose abandonment of all or any portion of the Peoria-to-La Harpe railroad line, this was not a subject that was a

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<sup>3</sup> See, Verified Statement of Alfred M. Sauer, attached to TP&W's Response to Petition to Revoke Notices of Exemption, dated March 26, 2001.

part of the negotiations for SF&L's purchase of the line. It is the position of SF&L that neither TP&W nor RailAmerica, Inc., can force SF&L to abandon the line. If however, at some later time it developed that the KJRY and the shippers on the line failed to tender sufficient traffic to justify continued operation of all or a portion of the line and SF&L were to apply to the STB for abandonment authorization, SF&L would expect that both TP&W [and] Rail America, Inc., would support the proposal in view of the aid that SF&L's purchase of the line was to RailAmerica, Inc. [Underscoring added for emphasis.]

That statement by Applicants' counsel hardly connoted a present intent by SF&L to abandon the La Harpe-to-Peoria railroad line, as KJRY fantasizes.

Finally, at pages 16-17 of its Supplement, KJRY argues that, if Applicants were truly interested in operating the La Harpe-to-Peoria railroad line as a viable shortline, SF&L would have managed to conclude the operating agreement, haulage agreement and two interchange agreements with TP&W before now. It evidently didn't occur to KJRY that the inordinate delay may have been occasioned by RailAmerica; indeed, it was SF&L's frustration with its inability to conclude the implementing agreements with TP&W that lead to its decision in November 2001 to no longer have TP&W act as its contract operator but instead to undertake the operation of the line itself. Thus, contrary to KJRY's glib conclusion that Applicants "have what they want: ownership of the rail, ties, switches and some equipment, without the headaches associated with attempting to operate a viable shortline [footnote omitted]," SF&L in fact has undertaken operation of the La Harpe-to-Peoria railroad line and has assumed

all of the burdens of rendering service on it.<sup>4</sup>

F.

The shipper opposition to  
SF&L's acquisition of the line  
was of KJRY's own making.

Beginning at page 19 of its Supplement, KJRY endeavors to portray the shippers on the La Harpe-to-Peoria railroad line as hostile to SF&L's acquisition of the property. As is evident, however, the shippers' opposition statements were crafted by KJRY and sent to the Board at its urging. In response to Interrogatory No. 4(c) of Applicants' initial discovery requests, Attachment D hereto, KJRY acknowledged having advised the shippers how, in the view of KJRY, SF&L's proposed acquisition of the line "could effect each of their business over the long term" and the concerns they should have "for additional business." "Supporters were also given the address, phone and fax numbers of who they could contact at the STB," specifically at the suggestion of KJRY, "to voice their concerns regarding lack of rate information." In response to Interrogatory No. 4(d), KJRY admitted, "Supporters were told that SF&L was affiliated with A&K Railroad Materials and that it was KJRY's belief that it was SF&L's intent to deteriorate business on the line in order to file for abandonment as soon as possible."

KJRY refers to the letters to the Board from Mr. William D. Edwards of Farmers Elevator Company, Mr. Robert D. Pschirrer of Pschirrer Asphalt Company and United Paving & Construction,

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<sup>4</sup> The entire discussion, at pages 17-19 of KJRY's Supplement, as to whether SF&L has or has not assumed control of the La Harpe-to-Peoria railroad line has been mooted; SF&L itself has been rendering service on the line since December 12, 2001.

attached to KJRY's Supplement as Exhibit J, as they had been attached to KJRY's Petition to Revoke, filed March 6, 2001. Each of the three letters includes the identically worded allegation that, when he visited their offices in January 2001, Michael J. Van Wagenen, Esq., Vice President and General Counsel of SF&L, disclaimed any connection between SF&L and A&K.<sup>5</sup> Of course, that's what these shippers said; KJRY had told them what to say. In its response to Interrogatory No. 4(a) of Applicants' initial discovery requests, KJRY acknowledged that it had been in touch with Farmers Elevator Company, Pschirrer Asphalt Company and United Paving & Construction and that, as supporters of KJRY's revocation request, the shippers had been supplied by KJRY with a draft letter to be sent to the Board. The draft letter, document number KJRY 0002-0003, in part, read, as follows:

KJRY's assertion, at page 19 of its Supplement, that Mr. Van Wagenen did not want these shippers to know of the relationship between SF&L and A&K is a total fabrication concocted by KJRY and is flatly contradicted by Mr. Van Wagenen's declaration submitted under penalty of perjury.<sup>6</sup>

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<sup>5</sup> In his Verified Statement, attached to Applicants' Reply, filed March 26, 2001, Mr. Van Wagenen categorically denied making the statements attributed to him and declared that he never disguised the fact that SF&L and A&K were affiliates.

<sup>6</sup> It should be noted that KJRY was apprized that Mr. Van Wagenen also called on Archer Daniels Midland, Hubbard Seed and McDonough Fertilizer and Seed in Bushnell, IL, and McDonough Feed and Seed in Scotia, IL, but evidently KJRY was unsuccessful in having these shippers send letters to the Board assailing SF&L.



At page 19 of its Supplement, KJRY next refers to the March 16, 2001, letter from Rogers Group, Inc., the supplier of aggregates to Pschirrer Asphalt Company. According to KJRY, the company "was informed by a TP&W marketing representative that its rates were to increase an astounding 81%." Even accepting the accuracy of KJRY's account, it goes without saying that TP&W's marketing representative was not authorized to, and did not, speak on behalf of SF&L.

The next shipper referred to by KJRY, at page 20 of its Supplement, was Keokuk Ferro-Sil, Inc., whose letter, dated February 6, 2001, was attached as Exhibit J to the Supplement, as it had been attached to KJRY's Petition to Revoke, filed March 6, 2001. According to KJRY, the company complained of service deficiencies and the failure to secure rate quotations for movements over the La Harpe-to-Peoria railroad line. Keokuk Ferro-Sil, Inc., of course, is not located on that line but, rather, is located in Keokuk, IA, and is served by KJRY, which reasonably could be expected to participate in through routes and joint rates with SF&L, but to date has refused to do so. In its response to Interrogatory No. 4 to Applicants' initial discovery requests, KJRY acknowledged that "several letters were sent back and forth between the two companies [KJRY and Keokuk Ferro-Sil] including a letter of support." One of KJRY's letters to Keokuk Ferro-Sil, Inc., dated February 2, 2001, document number KJRY 0004, asked the company to contact the Board to

and to

What KJRY, at page 20 of its Supplement, terms the strongest

condemnation of Applicants' conduct toward the La Harpe-to-Peoria railroad line comes from Roquette America, Inc., yet another shipper located in Keokuk and served by KJRY. Its letter, dated July 16, 2001, attached as Exhibit J to KJRY's Supplement, clearly confuses SF&L and TP&W. The service reductions and difficulty of securing rate quotations which Roquette America, Inc., ascribes to SF&L were those of TP&W, which remained the common carrier on the line until December 12, 2001, when SF&L took over the line's operation. Thus, when the shipper concluded its letter with the observation that "[b]ased on the first 6 months of operation by SF&L, this company is not showing a desire to continue service or offer reasonable rates to its shippers," Roquette America, Inc., was assailing the wrong railroad.

Of course, KJRY knew full well that Roquette America, Inc., was mistaken as to who the operator of the La Harpe-to-Peoria railroad line had been during the first half of 2001. Indeed, attached as Exhibit B to its Supplement are Applicants' responses to the interrogatories which had been propounded by UTU-IL, copies of which were served upon counsel for KJRY, as required by 49 C.F.R. 1114.21(f). Applicants' responses to Interrogatories Nos. 2, 3, 4, 6 and 7 made perfectly clear that "the proposed transaction has not yet been consummated and SF&L has not yet become the common carrier railroad on the Rail Line." Nevertheless, KJRY persists in attributing the shippers' complaints to SF&L, trying to capitalize on the shippers' obvious error in aid of KJRY's revocation request. If, as KJRY alleges, at page 21 of its Supplement, "dire economic circumstances . . . currently exist on the line," they most certainly are not the

result of "SF&L's own actions," as KJRY insists.

Rather than cut off SF&L's right to operate the La Harpe-to-Peoria railroad line, as KJRY urges by its revocation request, the Board should afford SF&L the opportunity to prove that it is capable of operating the line in a manner that is responsive to the transportation needs of the shippers on its line, as well as those on KJRY who elect to route their shipments for handling over the line.

## II.

### UTU-IL FAILED TO MEET ITS BURDEN OF PROOF

#### A.

UTU-IL was singularly uninformd about the effects of the proposed purchase.

The responses of UTU-IL to Applicants' discovery requests, Attachment E hereto, are highly instructive about how little knowledge they had about SF&L's proposed purchase from TP&W of the La Harpe-to-Peoria railroad line and its effects upon their constituents.

The Mayor Thomas C. Carper of the City of Macomb had no idea how many businesses there were in his community which tendered or received freight shipments, much less how many of such businesses were served by TP&W. He was unable to say how many businesses had contacted him about the impending sale of the TP&W's La Harpe-to-Peoria railroad line or how much freight they had tendered or received from TP&W. The answer, of course, is obvious; there is none, because Macomb is not served by TP&W, as Mayor Carper eventually conceded. Macomb is a station on BNSF. One well can wonder what the City of Macomb is doing in the

proceeding, and the explanation very likely lies in the call that Mr. Joseph C. Szabo placed to Mayor Carper in late February 2001.

This is the same Mayor Carper whose Verified Statement is attached as Appendix 6 to UTU-IL's Supplement, filed January 7, 2001. He continues to reveal his lack of knowledge of the facts pertaining to the instant transactions, as, for example, when he maintains that "[a] number of local shippers and interests have filed letters and statements" before the Board in opposition to SF&L's acquisition of the La Harpe-to-Peoria railroad line. It actually was just one, by Mr. Robert D. Pschirrer, President of United Paving & Construction, who, as we already have noted, sent the KJRY drafted letter which KJRY had suggested he send. Mayor Carper's professed concern about the downgrading or elimination of service on the line, a railroad line which does not serve Macomb, can be accorded very little weight.

Mr. Patrick M. O'Brien, responding on behalf of the County of McDonough, was no better informed than was Mayor Carper. He, too, was at a loss to say how many businesses in the County tendered or received freight shipments or how many of them were served by TP&W. Mr. O'Brien, also, did not know what volume of traffic such businesses may have tendered to or received from TP&W. In fact, Mr. O'Brien could not identify a single business in the County of McDonough which had contacted him concerning the sale to SF&L of TP&W's La Harpe-to-Peoria railroad line.

Most astonishing, however, was how very little knowledge was possessed by Mr. Joseph C. Szabo, Illinois Legislative Director of the United Transportation Union ("UTU"). Mr. Szabo in his interrogatory responses conceded not knowing how many persons

were employed on TP&W's La Harpe-to-Peoria railroad line or even how many of them were or are members of the UTU. Mr. Szabo was unable to state what the effect had been on the UTU-represented employees working on the La Harpe-to-Peoria railroad line of the diversion of BNSF's manifest intermodal train from Fort Madison to Galesburg, just as he was unable to state what the effect of the diversion has been on the UTU-represented employees on the Galesburg-to-Peoria railroad line.

Mr. Szabo acknowledged that the local, Local 198 which represents the UTU members employed by TP&W, took no action with respect to the effect upon its members of the sale to SF&L of TP&W La Harpe-to-Peoria railroad line and did not communicate any action to Mr. Szabo. Indeed, Mr. Szabo admitted that he was not authorized to speak on behalf of Local 198, the very unit of the UTU which presumably would be most directly affected by the proposed change in the ownership of the line. In short, Mr. Szabo may be authorized to appear on behalf of the UTU's Illinois Legislative Board, but he certainly can't claim to represent Local 198.

Significantly, neither Mr. O'Brien nor Mr. Szabo or anyone purporting to speak on their behalf submitted verified statements in support of UTU-IL's Supplement, quite possibly because they came to the realization that they were unable to contribute any information from their personal knowledge of the operations on TP&W's La Harpe-to-Peoria railroad line or the effect of its acquisition by SF&L.

B.

UTU-IL seeks the consolidation  
of five disparate proceedings.

At pages 9-10 of its Supplement, UTU-IL leaves no doubt that what it really is seeking is the consolidation, or at least the Board's contemporaneous consideration, of five proceedings: The two instant ones, STB Finance Docket No. 34009, Toledo, Peoria & Western Railway Corporation--Trackage Rights Exemption--Peoria and Pekin Union Railway Company, STB Finance Docket No. 34134, Keokuk Junction Railway Co.--Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation, and STB Finance Docket No. 33740, The Burlington Northern and Santa Fe Railway Company--Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights.

UTU-IL views these proceedings as manifesting some sort of a plot whereby the participating carriers have agreed upon a division of rail operations in western Illinois. Even if there were some element of substance for UTU-IL surmise, and we submit there is none, consolidation of the proceedings would be an inappropriate remedy, for the parties and issues in the five proceedings are not identical. See, Rule 42(a) of the Federal Rules of civil Procedure; American Trucking Assn's v. U.S., 326 U.S. 77, 80 (1945). Neither would the Board's contemporaneous consideration of them be practicable, as one or two of the proceedings are no longer pending before the agency and at least one other is pending before a reviewing court, divesting the Board of jurisdiction, at least without leave of the reviewing court, to reopen and reconsider the decision in question. See,

28 U.S.C. 2349(a).

UTU-IL has failed to demonstrate why regulation of the transactions in the instant proceedings would advance any of the goals of the Rail Transportation Policy, and it cannot overcome its shortcoming by trying to tie these proceedings to three other, altogether separate proceedings.

C.

The gravamen of UTU-IL's complaint in these proceedings is the diversion of BNSF's intermodal train.

Its Supplement permits of no doubt that UTU-IL's attempt to have the Applicants' Verified Notices of Exemption rejected or revoked is tied directly to the diversion of BNSF's manifest intermodal train from the Fort Madison-to-Peoria railroad line to the Galesburg-to-Peoria railroad line.

At page 3 of its Supplement, UTU-IL acknowledges, "These proceedings have arisen out of proposals by TPW to discontinue operations over its lines between East Peoria, IL, and Fort Madison, IA." UTU-IL, on that same page of its Supplement, added, "TPW on February 18, 2001 discontinued operation of its daily train in each direction between Peoria, IL and for Madison, IA, which was replaced by TPW train service twice weekly in each direction between Peoria and LaHarpe."

At page 8 of its Supplement, UTU-IL contends, "It is now clear that the entire TPW proposal to divest operations between Peoria and Fort Madison is now before the Board, with the December 11 substitution of SF&L 'service' for TPW service on the Peoria-LaHarpe segment; and with KJRY acquisition of the TPW 'West End' between LaHarpe-Lomax-Fort Madison by its December 12

notice."

At page 9 of its supplement, UTU-IL expresses its fear that "TPW's historical traffic data indicates minimal traffic would remain [sic] to sustain the line if TPW's Fort Madison traffic is rerouted in contemplation of abandoning the remaining Peoria-LaHarpe segment through transfer of responsibility to SFL."

At page 11 of its Supplement, UTU-IL declares, "Railroad personnel represented by UTU have suffered the loss of four positions, two as the result of the February 18, 2001 discontinuance of service to Fort Madison, and two from the TPW termination of service on the Peoria-LaHarpe segment."

The General Chairman for the UTU on the TP&W, Mr. Randal L. Brandt, in his Verified Statement, attached to UTU-IL's Supplement as Appendix A, noted:

TPW prior to February 19, 2001, operated daily trains, usually 6 days per week, one in each direction, between Peoria-LaHarpe-Fort Madison; and TPW operated a train, usually four days per week, between Peoria and Galesburg, and usually performed some switching in the Peoria area. Subsequent to February 18, 2001, TPW curtailed the Peoria-LaHarpe-Fort Madison operation, so as not to go west of LaHarpe. Service became only twice weekly in each direction, between Peoria and LaHarpe. . . We lost one crew, involving two employees, in the February 18-19, 2001 changes in the Peoria-LaHarpe-Fort Madison, and Peoria-Galesburg, train service.

Mr. Brandt in his Verified Statement, at page 2, and UTU-IL in its Supplement, at pages 4 and 11, recognized that the diversion of BNSF's manifest intermodal train from the Fort Madison-to-Peoria railroad line to the Galesburg-to-Peoria railroad line was not of the Applicants' doing, as SF&L did not commence operating the La Harpe-to-Peoria segment until December 12, 2001. Thus, Applicants in no way can be faulted by what was



a decision made by TP&W and/or BNSF.

More importantly, however, the rerouting of overhead traffic, the very thing which primarily concerns UTU-IL, can be effected wholly at the discretion of the railroad. In Exemption of Out of Service Rail Lines, 2 I.C.C.2d 146, 150 (1986), aff'd, Illinois Commerce Com'n v. I.C.C., 848 F.2d 1246 (D.C. Cir. 1988), the ICC held, "[T]he rerouting of overhead traffic is a matter of managerial discretion that requires no regulatory authorization and can be accomplished even where abandonment authority is denied." Accord, Futurex Industries, Inc. v. I.C.C., 897 F.2d 866, 873 (7<sup>th</sup> Cir. 1990); State of Illinois v. I.C.C., 698 F.2d 868, 873 (7<sup>th</sup> Cir. 1983). UTU-IL may not like the fact that BNSF's manifest intermodal train has been rerouted; however, that was a decision left to TP&W and/or BNSF's discretion, and the Board is without power to interfere.

D.

UTU-IL's miscellaneous  
objections are meritless.

At pages 6-7 of its Supplement, UTU-IL reiterates the argument, first advanced in Mr. Szabo's Petition for Stay of Effective Date, filed January 16, 2001, that SF&L could not avail itself of the section-10901 class exemption, 49 C.F.R. 1150.31, et seq., because TP&W retained the realty underlying the right-of-way of the La Harpe-to-Peoria railroad line and because, at the time of SF&L's acquisition of the line, SF&L had intended to have TP&W serve as the contract operator, rendering service on the line in SF&L's name and for SF&L's account. The Commission, Chairman Morgan, by its Decision served January 16, 2001, found

Mr. Szabo's submission to be unpersuasive:

According to UTU-IL, SF&L would not acquire the line because TPW will retain the realty. This, however, does not make the transaction ineligible for the class exemption, for parties seeking to invoke the class exemption need not own the land over which they propose to operate. Nor does the transaction appear to be ineligible for the class exemption because SF&L would employ TPW as a contract operator. SF&L asserts that it will be responsible for rendering service over the line, and the use of another entity to provide the service is not grounds for a stay.

In its supplement, UTU-IL fails to note in what respect the Decision of the Board, Chairman Morgan, had been erroneously entered. UTU-IL fails to distinguish the instant proceedings from the line of agency decisions, commencing with Maine DOT--Acq. Exemption--ME Central R. Co., 8 I.C.C. 835 (1991), in which the separation of the railroad line from the realty has been recognized and authorized. Moreover, UTU-IL fails to deal with the holding in Atchison, T. & S.F. Ry Co. v. K.C. Stock Yards Co., 33 I.C.C. 92, 98 (1915), that railroads may "lease or hire suitable facilities or discharge a part of their duties through agents and without restriction as to the public or private status of such agents or of the owners of the instrumentalities procured."

At page 10 of its Supplement, UTU-IL reverses its own position advanced only a few pages earlier and here urges that SF&L should be denied the use of the section-10901 class exemption, 49 C.F.R. 1150.31, et seq., because SF&L has concluded not to have TP&W serve as its contract operator and, commencing December 12, 2001, has itself begun operating the La Harpe-to-Peoria railroad line. SF&L was going to be the common carrier responsible for satisfying the shippers' rail transportation

requirements when TP&W was going to be the contract operator, and its is the common carrier obligated to render adequate service on the line now that it is performing the service itself. The commitment of SF&L remains the same, and the mere change in the manner in which the line is to be operated does not warrant the revocation of Applicants' Verified Notices of Exemption, as UTU-IL urges.

The reduction in service on the La Harpe-to-Peoria railroad line, to which UTU-IL refers, at pages 10-11 of its Supplement, occurred before SF&L took on the operation of the line and, as we already have explained, was the product of the decision of TP&W and/or BNSF to reroute the manifest intermodal train.

UTU-IL, at page 11 of its Supplement, contends that competition will be affected by SF&L's acquisition of the La Harpe-to-Peoria railroad line but fails to explain how that will come about.

Finally, at pages 11-12 of its Supplement, UTU-IL expresses its concern for the loss of UTU jobs which have resulted from the curtailment of operations necessitated by the diversion of BNSF's manifest intermodal train. Mr. Brandt, at page 2 of his Verified Statement, had the candor to acknowledge that the job losses on the La Harpe-to-Peoria railroad line have "modestly been offset by an increase in Peoria-Galesburg service." In any event, as UTU-IL reluctantly concedes, "[T]he Board cannot impose employee conditions under 49 U.S.C. 10901."<sup>7</sup>

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<sup>7</sup> Since SF&L never used TP&W as the provider of local contract rail service, a precondition for its commitment, TP&W is under no obligation to offer labor protection to adversely affected employees. See, Verified Statement of Alfred M. Sauer

In short, UTU-IL has failed to offer good and sufficient reasons for revoking Applicants' Verified Notices of Exemption.

### III.

#### REVOCATION OF THE NOTICES IS UNWARRANTED.

In the final analysis, the bid of KJRY and UTU-IL to have the notices of exemption in these proceedings revoked is premised on the relationship of SF&L and the other A&K affiliated railroads to A&K and on the abandonment authorizations these railroads heretofore obtained from the Board and ICC. The action which KJRY and UTU-IL urge the Board to take is unprecedented and likely to lead the Board down a treacherous path.

The Board and ICC in the past have taken great care to decide each proceeding before it solely on the testimony and exhibits adduced in that case. The agency has gone so far as to decline to delay at the urging of interested parties pending merger applications to await the outcome of closely related ones, Norfolk & W. Ry. Co. And New York, C. & St. L. R. Co. Merger, 324 I.C.C. 1, 18 (1964); Chesapeake & O.Ry. Co.--Control--Baltimore & O. R. Co., 317 I.C.C. 261, 263-64 (1962), or to hold up pending abandonment applications until the future of other segments of the very same railroad line has become more certain. Docket No. AB-55 (Sub-No 222X), CSX Transportation, Inc.--Exemption--Abandonment in Putnam and Parke Counties, IN, decided June 7, 1989; Docket No. AB-55 (Sub-No. 216X), CSX Transportation, Inc.--Exemption--Abandonment in Osceola and Clare Counties, MI, decided February 23, 1988; Docket No. AB-1 (Sub-No. 206), Chicago and North Western Transportation Company--Abandonment and Discontinuance of Trackage Rights--Between Hopkins and Chaska,

MN, decided February 4, 1988.

Herein, however, the underlying rationale advanced by KJRY and UTU-IL for the revocation of Applicants' notices of exemption rests on the abandonments approved by the Board or ICC in other proceedings involving SF&L and other A&K affiliated railroads. The Board should not allow itself to be led into that trap. As the court said in Indiana Sugars, Inc. v. I.C.C., 694 F.2d 1098, 1100 (1982), "[I]t is clear that the Commission must adjudicate every application upon a case by case basis. . . ." The Board should keep faith with that all important precept. It should preserve for an applicant the option of how it wishes to proceed before the Board. Knox & Kane R. Co.--Petition for Exemption, 366 I.C.C. 439, 443 (1982); Central R. Co. Of New Jersey--Abandonment, 342 I.C.C. 227, 282 (1972).

What KJRY and UTU-IL urge, namely, that Applicants are not suitable to avail themselves of the class exemptions of 49 C.F.R. 1150.31 and 49 C.F.R. 1180.2(d)(2), is reminiscent of what transpired some years ago relating to another carrier. North American Van Lines was deemed by the ICC not to be fit to be allowed to acquire additional properties based upon an alleged record of past violations of the statute and the agency's regulations and, accordingly, the ICC refused to grant it additional rights. The reviewing court held the ICC's actions were unlawful and ordered relief for the carrier. In North American Van Lines, Inc. v. I.C.C., 386 F.Supp 665, 667 (D.C. N.D. Ind. 1974), the court held:

"[F]itness" in respect to new certificate applications is a case-by-case determination (so long as there is no consolidation of cases), and must ultimately be

individually litigated in each application proceeding.

\* \* \*

The illegality of past operations does not bar a carrier from seeking and obtaining additional certificates for operating authority [citations omitted].

See, also, Virginia Appalachian Lumber Corporation v. I.C.C., 606 F.2d 1385 (D.C. Cir. 1979); Ligon Specialized Haulers, Inc. v. I.C.C., 587 F.2d 304 (6<sup>th</sup> Cir. 1978); North American Van Lines, Inc. v. U.S., 412 F. Supp. 782 (D.C. N.D. Ind. 1976).

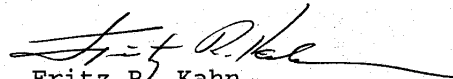
Here, of course, none of the abandonments of SF&L and the other A&K affiliated railroads referred to in the petitions to revoke and supplements filed by KJRY and UTU-IL was illegal; as we previously discussed, each had been authorized by the Board or ICC based upon the evidence adduced in the proceeding before it. Thus, there is all the more reason why the Applicants should be found properly to have availed themselves of the exemptions and why the revocation request of KJRY and UTU-IL should be denied.

WHEREFORE, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer ask that the Petitions to Revoke filed on behalf of Keokuk Junction Railway Co., and jointly by City of Macomb, County of McDonough and Joseph C. Szabo be denied.

Respectfully submitted,

SF&L RAILWAY, INC.,  
KERN W. SCHUMACHER and  
MORRIS H. KULMER

By their attorney,

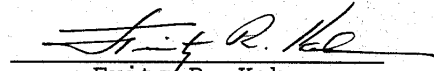
  
Fritz R. Kahn  
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Dated: January 11, 2002

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Reply upon counsel for each of the parties by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 11<sup>th</sup> day of January 2002.

  
Fritz R. Kahn

**ATTACHMENT A**

VERIFIED STATEMENT  
OF  
STEVEN J. VAN WAGENEN



BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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STB Finance Docket No. 33995

SF&L RAILWAY, INC.  
--ACQUISITION AND OPERATION EXEMPTION--  
TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SF&L RAILWAY, INC.

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VERIFIED STATEMENT  
OF  
STEVEN J. VAN WAGENEN

My name is Steven J. Van Wagenen, and I am Assistant Vice President of SF&L Railway, Inc. ("SF&L"), the corporate office of which is located at 1505 South Redwood Road, Salt Lake City, UT 84104.

Although I was not directly involved in the negotiations between SF&L and RailAmerica, Inc., for SF&L's purchase of the La Harpe-to-Peoria railroad line of the Toledo, Peoria and Western Railway Corporation ("TP&W"), which is the subject of the instant revocation proceedings instituted at the urging of Keokuk Junction Railway Co. ("KJRY"), I am thoroughly familiar with the transaction and with the events which have transpired since it

was concluded on December 29, 2000.

The La Harpe-to-Peoria railroad line had been the route of a manifest intermodal train of The Burlington Northern and Santa Fe Railway Company ("BNSF"), hauled by TP&W between Fort Madison, IA, and Peoria. The train ordinarily ran five or six days a week and was the means by which TP&W picked up and dropped off local traffic on the line and traffic received from or delivered to the KJRY at La Harpe. Shippers on the line, as well as shippers on the KJRY, thus were the beneficiaries of excellent service rendered at very modest rates.

For whatever the reasons, BNSF explored changing the point of interchange for BNSF's manifest intermodal train from Fort Madison to Galesburg, IL. The effect would be to divert most of the traffic which had been handled on the La-Harpe-to-Peoria railroad line to TP&W's Galesburg-to-Peoria railroad line. RailAmerica made a management decision that the local traffic which would remain on the La Harpe-to-Peoria railroad line, together with the traffic received from or delivered to the KJRY at La Harpe, were insufficient to meet its standards of profitability and, accordingly, put the line on the market.

Mr. Guy L. Brenkman, President and C.E.O. of Pioneer Railcorp, which controls KJRY and about a dozen other short line railroads, very much wanted to buy the La Harpe-to-Peoria railroad line, but his negotiations with RailAmerica proved to be unsuccessful. The bid of SF&L, however, was accepted, and it became the owner of the line. Mr. Brenkman, frustrated with the

failed purchase of the line, has since made claim against SF&L, as well as its owners, Messrs. Kern W. Schumacher and Morris H. Kulmer, and its affiliates, including A&K Railroad Materials, Inc. The pleadings filed on behalf of KJRY in the instant proceeding are a reflection of Mr. Brenkman's anger and frustration. I believe Brenkman intends doing everything within his power in seeking the failure of the SF&L's operation of the La Harpe-to-Peoria railroad line so that one way or another he will be able to acquire it in the long run. The revocation of the notice of exemption, which KJRY seeks, simply is one step in the path which Mr. Brenkman has set out to pursue.

At the time that SF&L purchased the La Harpe-to-Peoria railroad line, it was the intention of SF&L to have the TP&W operate the line as its contract operator, in SF&L's name and for SF&L's account. Much of the year 2001 was consumed in negotiations between SF&L and RailAmerica trying to hammer out an operating agreement, a haulage agreement, and a couple of interchange agreements. As I shall discuss in greater detail below, the negotiations were unproductive, and SF&L itself has begun operating the line.

I accompanied my father, Michael J. Van Wagenen, Esq., Vice President and General Counsel of SF&L, on his visit to the offices of the TP&W and his calls on the shippers on the La Harpe-to-Peoria railroad line in mid-January of 2001. As I recall, we spoke with, among others, Mr. William W. Edwards, Manager of Farmers Elevator Company of Scotia, IL, and Mr. Robert

D. Pschirrer, President of Pschirrer Asphalt Company of Canton, IL. We explained to them that TP&W would continue to render service, albeit as contract operator for SF&L. That didn't seem to bother them at all; they were more concerned about the rates that would be assessed. We explained to them that, since it appeared that the BNSF's manifest intermodal train would be diverted to another line and their shipments no longer would be incremental traffic, it was inevitable that there would be some increase in the rates they had been paying. We could not make a commitment as to what the rates would be, for we didn't know what our costs would be, at least until such time as we saw how much traffic would remain on the line and how frequently we would need to operate trains to accommodate it. The conversations were very cordial.

In subsequent letters to the Board, attached to KJRY's Petition to Revoke, filed March 6, 2001, Messrs. Edwards and Pschirrer seemed to express hostility towards SF&L. I can only surmise that in the interim KJRY had been bad-mouthing SF&L. Indeed, in its responses to SF&L's first set of interrogatories, KJRY acknowledged having had contacts with Farmers Elevator Company, Pschirrer Asphalt Company and United Paving & Construction, as well as others whose letters were attached to KJRY's Petition to Revoke. KJRY even admitted that it had supplied its supporters with a draft of the letter to be sent to the Board.

I was aware that the La Harpe-to-Peoria railroad line had

very little local traffic. We were told by RailAmerica that only about 800 carloads of revenue freight originated or terminated at the stations on the line. The biggest of the shippers on the line, Farmers Elevator Company, tendered only 388 carloads in all of the year 2000, generating gross revenue of \$83,507. Pschirrer Asphalt Company accounted for only 99 carloads that same year, generating revenue of \$32,401.

If SF&L were going to make a go of it, it would need to continue hauling the shipments originating or terminating on the KJRY, which, according to RailAmerica's advice to us, amounted to approximately 3,600 carloads a year. I, accordingly, tried to contact the personnel at KJRY to establish an interchange arrangement between it and SF&L. On June 12, 2001, I faxed KJRY a Junction Interchange Update Form, a copy of which is attached. I received no response. On June 27, 2001, I faxed KJRY a follow-up note, a copy of which is attached, together with the Junction Interchange Update Form. I received no response. On July 17, 2001, I once more faxed KJRY a follow-up note, a copy of which is attached, again together with the Junction Interchange Update Form. This time I received a response. There was a voicemail message on my telephone from Mr. B. Allen Brown of Pioneer Railcorp, a copy of the transcript of which is attached, as follows:

Hi Steve, my name is Allen Brown, I am the Chief Operating Officer for Pioneer Railcorp. And I am calling regarding this interchange report that you keep wanting to have our people sign. We're not going to sign it. We don't even recognize you have the right to be asking for it. But in any case quit calling our

people, I have told them not to sign it, we're not going to sign it, and you do whatever you need to do. Thank you. My number is 309-697-1400. Bye.

SF&L became increasingly frustrated with the negotiations with RailAmerica over the operating agreement, haulage agreement and the two interchange agreements, and, notwithstanding the rebuff I had received from KJRY, we decided to take a look into whether SF&L itself could operate the La Harpe-to-Peoria railroad line. SF&L engaged a highly respected outside consultant to assist us in determining what needs we had for locomotives and cars and how best to secure them and what personnel we would need to engage to render service on the line.

I now had several years' experience in running a short line railroad, Southern Manitoba Railroad in Canada, and I felt confident that I could superintend the operations of the SF&L.

SF&L in November 2001, accordingly, notified RailAmerica that it no longer expected to operate the La Harpe-to-Peoria railroad line as SF&L's contract operator and that SF&L expected itself to operate the line. RailAmerica was pleased to learn of the change and said it would be supportive.

I thereafter returned to Peoria to meet with the TP&W personnel to advise them of the change of plans and to begin working with them on an orderly transition from TP&W's operation of the line to ours.

I then went over to the office of Pioneer Railcorp, which also is headquartered in Peoria, to apprise its personnel of the fact that SF&L itself would be operating the La Harpe-to-Peoria

railroad line. To my astonishment, I was cordially received by Mr. Brown, as well as by Jonathan Kazense, Esq., Pioneer Railcorp's General Counsel. We discussed the need for effecting a mutually convenient interchange at La Harpe, and they seemed perfectly amenable to cooperating to set one up. I left with them a Junction Interchange Update Form and other documents for them to review, sign and return to me, and departed from our meeting feeling optimistic that the hard feelings manifested by KJRY against SF&L were a thing of the past.

SF&L took over operation of the La Harpe-to-Peoria railroad line on December 12, 2001, and we have been rendering service on it ever since.

To my surprise, the very same day, on December 12, 2001, KJRY renewed its attack upon SF&L in filing its Supplement to its Motion to Revoke SF&L's Notice of Exemption.

Even more astonishing was that at the same time it announced that it had bought TP&W's railroad line between La Harpe and Lomax, IL, and the assignment of its trackage rights on the BNSF between Lomax and Fort Madison and sought from the Board the requisite authority to consummate the transaction. Finance Docket No. 34143, Keokuk Junction Railway Co.--Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation. When I met with Pioneer Railcorp's Messrs. Brown and Kazense just a few days earlier, they did not say one word about the impending acquisition of the La Harpe-to-Fort Madison railroad line.

I do not know what Mr. Brenkman's motive was in acquiring TP&W's La Harpe-to-Fort Madison railroad line. I can only speculate that this is just another means for him to try to put SF&L out of business. Certainly, KJRY no longer will require the SF&L to haul its cars to and from interchanges with BNSF and the Union Pacific Railroad Company ("UP") at Peoria or some other station on the La Harpe-to-Peoria railroad line. KJRY will be able to hold on to the traffic and effect direct interchanges with BNSF and UP at Fort Madison.

Thus at the very time that KJRY recklessly charges SF&L with having purchased the La Harpe-to-Peoria railroad line, not with any intent to operate it, but simply to abandon it for the value of its track materials, KJRY is doing its level best to try to bring about that very result, to sabotage the very property it contends before the Board is critical to its survival. I note that, at page 21 of its December 12, 2001, Supplement to its Petition to Revoke, KJRY conceded that it wished to bring about the abandonment of the La Harpe-to-Peoria railroad line so that "a company such as KJRY, who is committed to running a shortline railroad, could make an OFA and purchase the line [footnote omitted]."

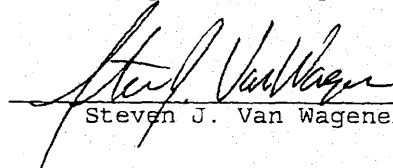


## VERIFICATION

I, Steven J. Van Wagenen, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief.

I further declare that I am qualified and authorized to submit this verification on my behalf. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Salt Lake City, UT, this 8<sup>th</sup> day of January 2002.

  
Steven J. Van Wagenen

# JUNCTION INTERCHANGE UPDATE FORM

Junction Industry Reference File

FAX completed form to the  
RAILINC at (919) 651-5143

JUNCTION - unique identification of the LOCATION of an INTERCHANGE

JUNCTION ABBREVIATION:

STANDARD POINT LOCATION CODE (SPLC):

JUNCTION LOCATION NAME:

JUNCTION STATE / PROVINCE:

LAHAR  
389415.000  
LA HARPE  
IL

INTERCHANGE - description of ACTIVITIES between two transportation entities at a JUNCTION

ACTION REQUESTED: A (A = add, C = change, E = expire)

INTERCHANGE TYPE: N

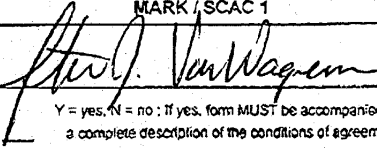
	INTERCHANGING CARRIER	REPORTING CARRIER	CSM STATION FSAC (when required)
MARK / SCAC 1	SFLR	SFLR	1196
MARK / SCAC 2	KJTY	KJTY	128

DELIVERY ONLY FLAG: N (Y = yes, N = no)

INHIBIT JUNCTION ADVICES: N (Y = yes, N = no)

EFFECTIVE DATE OF ACTION: 2001.06.27 (CCYY-MM-DD)

AGREEMENT - signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE		
CONDITIONAL AGREEMENT?	Y = yes, N = no; If yes, form MUST be accompanied by a complete description of the conditions of agreement	Y = yes, N = no; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME (please print)	STEVEN J. VAN WAGENEN	
COMPANY	SF+L RAILWAY CO	
PHONE NUMBER	801.209.4229	
FAX NUMBER	801.977.9387	

## ***SF&L RAILWAY***

P.O. Box 26421, Salt Lake City, UT 84126

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### **FAX Coversheet**

**To: Kathy**  
Keokuk Junction Railway  
FAX: (309) 697-1577  
(309) 697-1400

**From: Steven Van Wagenen**  
FAX: (801) 977-9387  
Phone: (801) 209-4229

**Date: June 27, 2001**


**RE: Junction Interchange Update Form**

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Dear Kathy,

Attached is a Junction Interchange Update form for our interchange at La Harpe, IL. Please complete your portion and return fax to SF&L at (801) 977-9387. If I should be sending this form to someone else, or if you have any questions, feel free to contact me at your convenience.

Best Regards,

Steven Van Wagenen 

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Total number of pages (including coversheet): (2)

## ***SF&L RAILWAY***

P.O. Box 26421, Salt Lake City, UT 84126

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July 17, 2001

**VIA FAX: (309) 697-1577**

Kathy Borris  
Keokuk Junction Railway  
1318 South Johanson Road  
Peoria, IL 61607

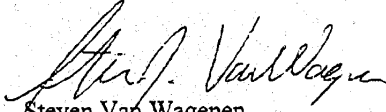
**RE: Junction Interchange Update Form**

Dear Kathy,

Attached is a copy of the Junction Interchange Update form which I faxed to you on June 27, 2001. I have also left you a few messages in an effort to properly establish our interchange at La Harpe, IL with the AAR. Please contact me at your earliest convenience at (801) 209-4229 or by return FAX at (801) 977-9387.

Thank you again for your assistance.

Sincerely,

  
Steven Van Wagenen  
Assistant Vice President

Transcript of Voice Mail Message

From: Mr. Allen Brown, Chief Operating Officer, Pioneer Railcorp

To: Steven Van Wagenen, Assistant Vice President of SF&L Railway

Date: July 17, 2001 at 2:50pm Central Time

RE: Junction Interchange Update Form Request

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"Hi Steve, my name is Allen Brown, I am the Chief Operating Officer for Pioneer Railcorp. And I am calling regarding this interchange report that you keep wanting to have our people sign. We're not going to sign it. We don't even recognize you have the right to even be asking for it. But in any case quit calling our people, I have told them not to sign it, we're not going to sign it, and you do whatever you need to do. Thank you. My number is 309-697-1400. Bye.

**ATTACHMENT B**

LETTER FROM RAILAMERICA, INC.,  
TO KJRY, DATED DECEMBER 12, 2001



Corporate Headquarters  
5300 Broken Sound Blvd. NW,  
Boca Raton, Florida 33487  
Tel: 561/994-6015  
Fax: 561/994-3929 • 561/994-4629  
561/241-5397

December 12, 2001

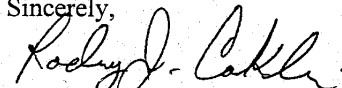
Pioneer Rail Corp.  
Keokuk Junction Railway, Inc.  
ATTN: General Manager  
1318 South Johanson Road  
Peoria, IL 61607

RE: Sale by Toledo, Peoria and Western Railway Corp. ("TP&W") to SF&L Railway, Inc.  
("SF&L") of Line from MP 123 to MP 194.5

Dear General Manager:

Please be advised that TP&W closed on the sale of its line between MP 123, near Peoria, to MP 194.5 at Westend Jct. on December 10, 2001. SF&L is now the party that KJRY will interchange with for traffic moving to Peoria. I am sure that SF&L will be available to answer any of your questions.

Sincerely,

  
Rodney J. Conklin  
Senior Vice President Operations

**ATTACHMENT C**

TP&W GENERAL ORDER NO. 01-35,  
DATED DECEMBER 12, 2001



**Toledo, Peoria, and Western Railway  
A RailAmerica Company**

**GENERAL ORDER NO 01-35**

December 12, 2001

**Subject: Illinois West Subdivision: SF&L Railway Assumption of Ownership**

**Effective at 1400 hours Wednesday, December 12, 2001, the SF&L Railway will assume ownership and control of the Illinois West Subdivision between MP 123.0 and MP 194.5.**

**The following changes are effective at 1700 hours Monday, December 10, 2001 as a result of the SF&L Railway's startup of ownership and operation:**

**Peoria Terminal Subdivision**

**West Yard Limit extended from MP 122.5 to MP 123.0.**

**New station "SF&L Junction" in service at MP 123.0. Station number is 11240.**

**Maximum authorized speed between Iowa Junction MP 113.9 and SF&L Junction MP 123.0 is 10 MPH.**

**Main Track Authorization between Iowa Junction MP 113.9 and SF&L Junction MP 123.0 is GCOR Rule 6.13 Yard Limits. Trains, engines and on-track equipment must obtain verbal permission from the TP&W Train Dispatcher, St. Albans, before occupying or fouling the Main track within these limits. All movements must report promptly when clear of these limits.**

**SF&L trains may use the main track between SF&L Junction MP 123.0 and MP 117.0 as prescribed above. Interchange between the TP&W and the SF&L will be made on either Hollis Pass, or at the Transfer track, Sommer, IL. TP&W Customer Service, East Peoria, must be advised promptly when interchange is delivered or pulled, and the track(s) delivered to or pulled from. Crews using Hollis Pass are reminded to**

**General Order 01-35 (Continued)**

**observe GCOR Rule 8.20 and make sure derails are left in the derailing position if engines or cars are left on Hollis Pass.**

**TP&W Timetable No. 1, station page, item 1 and item 3, page 13; and item 4, page 14 modified.**

**Illinois West Subdivision**

**New station SF&L Junction, station number 11240, in service at MP 123.0.**

**Mapleton, MP 122.5, removed from Illinois West Subdivision.**

**New station West Junction, station number 11950, in service at MP 194.5.**

**Operations between SF&L Junction, MP 123.0 and West Junction, MP 194.5 are under the control and jurisdiction of the SF&L Railway Superintendent, Canton, IL. SF&L Railway Timetable and Operating Rules are in effect.**

**Maximum authorized speed between West Junction, MP 194.5 and Lomax, MP 206.0 is 10 MPH.**

**Main track authority between MP 194.5 and MP 196.0 is GCOR Rule 6.13, Yard Limits. Main track authority between MP 196.0 and MP 204.9 is TWC. Main track authority between MP 204.9 and MP 206.0 is GCOR Rule 6.13, Yard Limits.**

**Keokuk Junction Railway trains and SF&L Railway trains may use the TP&W main track for purposes of interchange from West Junction MP 194.5 to MP 196.0.**

**TP&W Timetable No.1, station page and item 1, page 17, item 3 and item 4, page 18, modified.**

Bert J. Ruden  
Assistant General Manager

The following General Orders are in effect: Nos 01-001, 01-002, 01-003, 01-004, 01-005, 01-006, 01-007, 01-009, 01-013, 01-014, 01-15, 01-16, 01-17, 01-19, 01-20, 01-21, 01-22, 01-23, 01-24, 01-25, 01-26, 01-27, 01-28, 01-29, 01-30, 01-31, 01-32, 01-33, 01-34, and 01-35.

The employee posting this General Order must fill in the information below and return a copy via fax to Assistant General Manager Bert Ruden at 309-698-8120.

Posted At \_\_\_\_\_  
(Location)

By \_\_\_\_\_  
(Name)

Date and Time \_\_\_\_\_

**ATTACHMENT D**

**DISCOVERY RESPONSES  
OF  
KJRY**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33995

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION  
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--  
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
--CONTINUANCE IN CONTROL EXEMPTION--  
SF&L RAILWAY, INC.

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KEOKUK JUNCTION RAILWAY CO.'S  
RESPONSES TO THE FIRST SET OF INTERROGATORIES  
AND PRODUCTION REQUESTS OF  
SF&L RAILWAY, INC., KERN W. SCHUMACHER  
AND MORRIS H. KULMER

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Keokuk Junction Railway Co. ("KJRY") responds to the First Set of Interrogatories and Document Production Requests to Keokuk Junction Railway Co. of SF&L Railway, Inc., Kern W. Schumacher, and Morris H. Kulmer (collectively "Respondents") served July 20, 2001 (the "Discovery Requests").

**General Objections**

The following general responses are made with respect to all of the interrogatories and document requests:

A. KJRY objects to the production of, and is not producing, any information or documents that are protected from disclosure by law, privilege or right, including the attorney-client privilege, the work product doctrine, and any applicable settlement privilege.

B. KJRY objects to the production of, and is not producing, information and documents that as are readily available to respondents as they are to KJRY, including but not limited document documents on file at the Surface Transportation Board, or any other government agency or court, or that have appeared in newspapers and other public media.

C. KJRY objects to the production of, and is not producing, information and documents that are readily available to Respondents from their own files, or from communication with Respondents' employees and/or agents.

D. KJRY objects to the production of, and is not producing, information and documents sought from KJRY's "former parent companies," "former subsidiaries," "predecessors-in-interest," "former officers, directors, employees, agents, or attorneys," "any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest," and "any commercial entities in which any of the aforesaid hold or held any degree of ownership interest," as being overly broad, unduly burdensome, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information, and seeking to invade the attorney-client privilege.

E. KJRY objects to the production of, and is not producing, information and documents to the extent that they seek information or documents for periods prior to 2000.

**INTERROGATORIES**

1. With respect to the acquisition by Pioneer Railcorp of KJRY:

- (a) When did Pioneer Railcorp acquire KJRY?
- (b) From whom did Pioneer Railcorp acquire KJRY?
- (c) What did Pioneer Railcorp pay for KJRY?
- (d) How did Pioneer Railcorp finance its acquisition of KJRY?
- (e) What debt does Pioneer Railcorp continue to have as a result of its acquisition of KJRY?

**RESPONSE:** KJRY objects to Respondents' Interrogatory No. 1 (a)-(e) inclusive on the grounds that it is overly broad, unduly burdensome, seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information and documents that are as easily available to Respondents as they are to KJRY and are available in the public domain.

2. With respect to the operation of KJRY for each of the years 1998, 1999, 2000 and the first six months of 2001:

- (a) What were KJRY's annual operating revenues?
- (b) What were KJRY's annual operating expenses?
- (c) How many carloads of revenue freight annually originated on the KJRY?
- (d) How many carloads of revenue freight annually terminated on the KJRY?
- (e) How many tons of revenue freight annually originated on the KJRY?
- (f) How many tons of revenue freight annually terminated on the KJRY?

- (g) How many carloads of revenue freight annually were interchanged from the KJRY to the TP&W at La Harpe?
- (h) How many carloads of revenue freight annually were interchanged from the TP&W to the KJRY at La Harpe?
- (i) How many carloads of revenue freight annually were interchanged from the KJRY to the BNSF at Keokuk?
- (j) How many carloads of revenue freight annually were interchanged from the BNSF to the KJRY at Keokuk?

**RESPONSE:** KJRY objects to Respondents' Interrogatory No. 2 (a)-(j) inclusive on the grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

3. With respect to each shipper, i.e., consignor or consignee, situated on the lines of, and served by KJRY, for each of the years 1998, 1999, 2000 and the first six months of 2001:

- (a) Identify each shipper, giving its name, address, telephone number, name of its president and/or chief executive officer, station where located and milepost designation.
- (b) Identify the number of carloads of revenue freight tendered to KJRY annually.
- (c) Identify the number of revenue carloads of revenue freight delivered by KJRY annually.
- (d) Identify the commodity or commodities shipped via the KJRY.
- (e) Identify the commodity or commodities delivered by the KJRY.
- (f) Identify the number of tons of revenue freight tendered to KJRY annually.



- (g) Identify the number of tons of revenue freight delivered by KJRY annually.
- (h) Identify the freight revenue accruing to KJRY on outbound shipments annually.
- (i) Identify the freight revenue accruing to KJRY on inbound shipments annually.
- (j) Identify whether the routing ordinarily was designated by the shipper.
- (k) Identify whether the outbound and inbound shipments were routed via La Harpe or Keokuk and the percentage of interchanged shipments moving via each connecting point.
- (l) Identify whether the outbound and inbound shipments were capable of being routed via La Harpe rather than via Keokuk.
- (m) Identify whether the outbound and inbound shipments were capable of being routed via Keokuk rather than via La Harpe.

**RESPONSE:** KJRY objects to Respondents' Interrogatory No. 3 (a)-(m) inclusive on the grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

4. With respect to each of Calusa Elevator Co., Calusa, IL, Farmers Elevator Company, Scotia, IL, Keokuk Ferro-Sil, Keokuk, IA, Community Development Department, City of Canton, IL, Mayor, City of Canton, IL, United Paving & Construction, Macomb, IL, and Poschirrer (sic) Asphalt Company, Canton, IL, hereinafter collectively referred to as "supporters":

- (a) When in the years 2000 or 2001 was there a contact, i.e., telephone call, letter of personal visit, between a representative of KJRY and/or Pioneer Railcorp and each of the supporters?

**RESPONSE:** KJRY objects to Respondents' Interrogatory No. 4(a) on the grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because "contacts" with the referenced entities may have been entirely unrelated to matters of relevance to this proceeding. Without waiver of said objections:

There were no contacts with any shippers regarding SF&L in 2000.

Colusa Elevator, Colusa, IL. In 2001 there have several phone calls between the two companies, with initiation of same by both parties. Exact date of conversations unknown. Letter of support received from Colusa Elevator in February 2001.

Farmers Elevator Company, Sciota, IL. In 2001, January through mid June phone calls were made by both parties several times a week. In January 2001 letters were sent to Farmers Elevator Company by Pioneer/KJRY personnel. Letter received from Farmers Elevator Company in January 2001.

Keokuk Ferro-Sil. In 2001 up through mid June phone calls were made by both parties several times a week. Additionally, several letters were sent back and forth between the two companies including a letter of support.

Community Development Department /City of Canton, IL. No direct contact made by Pioneer/KJRY with Community Development Department of the City of Canton. City of Canton did call and send letter of support.

Mayor/City of Canton, IL. No direct contact made by Pioneer/KJRY with Mayor of Canton. Pioneer/KJRY did receive a phone call from the office of Mayor and a letter of support.

United Paving & Construction, Macomb, IL. Pioneer/KJRY did not initiate contact with United Paving. In 2001 United Paving contacted Pioneer/KJRY and sent a letter of support.

Pschirrer Asphalt Company, Canton, IL. Pioneer/KJRY did not initiate contact with Pschirrer Asphalt. In 2001 Pschirrer Asphalt contacted Pioneer/KJRY and sent a letter of support.

(b) At whose initiative was the contact made, i.e., by a representative of KJRY and/or Pioneer Railcorp or by a representative of each of the supporters?

**RESPONSE:** KJRY objects to Respondents' Interrogatory No. 4(b) on the grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because "contact" with the referenced entities may have been entirely unrelated to matters of relevance to this proceeding. Without waiver of said objections, see Response to Interrogatory No. 4(a).

(c) What, if anything, did a representative of KJRY and/or Pioneer Railcorp say to each of the supporters about the impending sale of TP&W to SF&L of the Peoria-to-La Harpe railroad line?

**RESPONSE:** Supporters were notified that there was an announcement of a sale of the west end of the TP&W to SF&L. The supporters were each told how it could effect each of their businesses over the long term. They were informed of the concerns for additional business. They were informed that when requesting rates TP&W had informed KJRY that TP&W was unable to quote rates at that time for SF&L. TP&W advised KJRY that it should call SF&L directly to discuss rates. KJRY made numerous phone calls to SF&L to discuss rates but never was able to make contact and never received a return phone call. The supporters were given the names and contact information for SF&L personnel so that the supporter could try and make contact with SF&L personally. Supporter were also given the address, phone and fax numbers of who they could contact at the STB to voice their concerns regarding lack of rate information.

(d) What, if anything, did a representative of KJRY and/or Pioneer Railcorp say to each of the supporters about A&K Railroad Materials, Inc., and the acquisitions and abandonments of affiliated railroads?

**RESPONSE:** Supporters were told that SF&L was affiliated with A&K Railroad Materials and that it was KJRY's belief that it was SF&L's intent to deteriorate business on the line in order to file for abandonment as soon as possible.

(e) What, if any, assistance, such as providing a draft letter to the Secretary of the Board, did a representative of KJRY and/or Pioneer Railcorp give to each of the supporters?

**RESPONSE:** Supporters were supplied with a draft letter to the STB as well as a letter indicating how their service had deteriorated. They were also informed that TP&W (that would be performing switching service for SF&L) previously interchanged at LaHarpe, IL 5-6 days per week to move the supporters business, but TP&W had informed KJRY that operations/interchange would consist of twice a week service. Supporters were all informed how the situation could specifically effect each of their businesses.

5. With respect to the acquisition by SF&L of TP&W's Peoria-to-La Harpe railroad line:

(a) Has KJRY and/or Pioneer Railcorp contacted SF&L to establish interchange arrangements or other working relationships with SF&L?

**RESPONSE:** No. KJRY and SF&L currently have no interchange, and even after SF&L assumes control of the track owned and operated by Toledo, Peoria and Western Railway Corporation ("TP&W"), KJRY and SF&L will not have an interchange, because a short segment of TP&W's track will still separate the tracks operated by KJRY and SF&L at La Harpe, Illinois.

(b) Has SF&L contacted KJRY and/or Pioneer Railcorp to establish interchange arrangements or other working relationships with KJRY?

**RESPONSE:** KJRY has been approached by agents of SF&L to sign an "interchange agreement." KJRY has declined to sign any such arrangement for the reason referenced in response to Interrogatory No. 5(a).

(c) Has KJRY and/or Pioneer Railcorp advised SF&L how many carloads or revenue freight it anticipated annually interchanging with SF&L?

**RESPONSE:** No. See response to Interrogatory No. 5(a).

(d) Has SF&L advised KJRY and/or Pioneer Railcorp how many carloads of revenue freight it anticipated annually interchanging with KJRY?

**RESPONSE:** No. See response to Interrogatory No. 5(a).

(e) Has KJRY and/or Pioneer Railcorp sought to negotiate through-route and joint-rate arrangements with SF&L?

**RESPONSE:** No. See response to Interrogatory No. 5(a).

(f) Has SF&L sought to negotiate with KJRY and/or Pioneer Railcorp through-rate and joint-rate arrangements with KJRY?

**RESPONSE:** No. See response to Interrogatory No. 5(a).

6. With respect to the railroad lines of the Toledo, Peoria and Western Railway Corporation:

(a) Did KJRY and/or Pioneer Railcorp at any time in the years 2000 and 2001 evidence an interest in acquiring any of said railroad's lines?

**RESPONSE:** Yes.

(b) Did KJRY and/or Pioneer Railcorp communicate its interest in acquiring any of said railroad's lines to TP&W and/or RailAmerica, Inc.?

**RESPONSE:** Yes.

(c) Which of said railroad's lines was KJRY and/or Pioneer Railcorp interested in acquiring from TP&W and/or RailAmerica, Inc.?

**RESPONSE:** Pioneer wanted to acquire the TP&W west-end, defined as:

Hollis, IL (beginning of TP&W ownership) to Lomax, IL, including Mapleton spur. This also included rights into Fort Madison, IA (from Lomax) and into Peoria, IL (from Hollis).

(d) Who on behalf of KJRY and/or Pioneer Railcorp participated in the discussions or negotiations with TP&W and/or RailAmerica, Inc.?

**RESPONSE:** B. Allen Brown, then Vice President – Corporate Development

(e) Who on behalf of TP&W and/or RailAmerica, Inc., participated in the discussions or negotiations with KJRY and/or Pioneer Railcorp?

**RESPONSE:** Donald D. Redfearn, Executive Vice President was the lead and discussions were also held regarding specific topics with Al Sauer (marketing/trackage rights) and RailAmerica's Chief Operating Officer. Acknowledgements as to the progress and RailAmerica's desire to sell were at times confirmed by Gary O. Marino, President & CEO.

(f) Did the property or properties which were the subject of the discussions or negotiations between KJRY and/or Pioneer Railcorp, on the one hand, and, on the other, TP&W and/or RailAmerica, Inc., include the realty as well as the rails, ties and other improvements?

**RESPONSE:** Yes, it included real estate, track facilities and other improvements. Pioneer was never told to separate the real estate from the track facilities. Pioneer was told by RailAmerica that Pioneer needed to bid on the entire package.

(g) At what price and other terms and conditions was TP&W and/or RailAmerica, Inc., willing to sell the property or properties which were the subject of the discussions or negotiations with KJRY and/or Pioneer Railcorp?

**RESPONSE:** RailAmerica wanted to sell Kolbe to Lomax. They were asking \$5,000,000.

(h) At what price and other terms and conditions was KJRY and/or Pioneer Railcorp willing to buy the property or properties which were the subject of the discussions or negotiations with TP&W and/or RailAmerica, Inc.?

**RESPONSE:** See letters of B. Allen Brown attached hereto.

(i) When did KJRY and/or Pioneer Railcorp learn of the rerouting of the overhead container trains and the change in the interchange from Ft. Madison to Galesburg?

**RESPONSE:** Pioneer learned about the transfer of the intermodal trains to a Galesburg interchange during Mr. Brown's meeting with RailAmerica's Donald D. Redfearn, RailAmerica's Executive Vice President, and Al Sauer, RailAmerica's marketing chief, at the 2000 Annual American Short Line and Regional Railroad Association Convention held in Chicago, Illinois. They indicated that the transfer was why they were talking to Pioneer about the sale of the TP&W west-end.

(j) Did the rerouting of the overhead container trains and the change in the interchange from Ft. Madison to Galesburg have an effect on the interest of KJRY and/or Pioneer Railcorp in acquiring the property or properties which were the subject of the discussions or negotiations with TP&W and/or RailAmerica, Inc., and upon the price and other terms and conditions KJRY and/or Pioneer Railcorp were willing to pay for such property or properties?

**RESPONSE:** No. No.

(k) Did KJRY and/or Pioneer Railcorp have any communications with The Burlington Northern and Santa Fe Railway Company about the rerouting of the overhead container trains and the change in the interchange from Ft. Madison to Galesburg, and, if so, how, when, where and with whom were such communications and what was the substance of the exchange between the parties?

**RESPONSE:** No.

#### DOCUMENT PRODUCTION REQUESTS

1. Produce all documents identified in response to the Interrogatories set forth above.

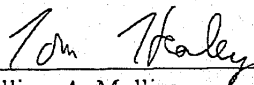
**RESPONSE:** Responsive documents, if any, are attached to this Response.

2. Produce all documents relied upon in preparation of the responses to the Interrogatories set forth above.

**RESPONSE:** Responsive documents, if any, are attached to this Response.

Respectfully submitted,

Jonathan L. Kazense  
Keokuk Junction Railway Co.  
1318 South Johanson Road  
Peoria, IL 61607  
(309) 697-1400

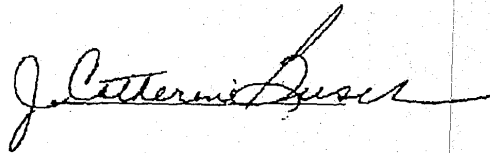
  
William A. Mullins  
Thomas J. Healey  
Troutman Sanders, LLP  
401 Ninth Street, N.W.  
Suite 1000  
Washington, DC 20004  
(202) 274-2950

August 6, 2001

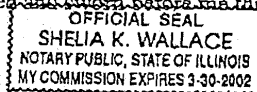


VERIFICATION

Catherine Busch, having been duly sworn, deposes and states that she has read the foregoing responses to the First Set of Interrogatories and Document Production Requests of SF&L Railway, Inc., Kern W.. Schumacher, and Morris H. Kulmer, and they are true and correct to the best of her knowledge and belief.



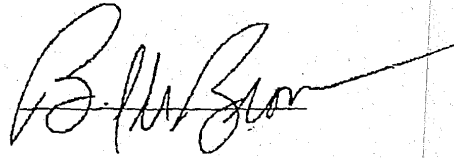
Subscribed and sworn before me this 6<sup>th</sup> day of August, 2001



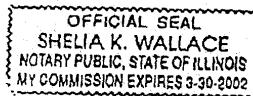
Shelia K. Wallace  
Notary Public

VERIFICATION

B. Allen Brown, having been duly sworn, deposes and states that he has read the foregoing responses to the First Set of Interrogatories and Document Production Requests of SF&L Railway, Inc., Kern W.. Schumacher, and Morris H. Kulmer, and they are true and correct to the best of his knowledge and belief.




Subscribed and sworn before me this 6th day of August, 2001



Shelia K. Wallace  
Notary Public

**CERTIFICATE OF SERVICE**

This is to certify that on this 6<sup>th</sup> day of August, 2001, I caused the foregoing "Keokuk Junction Railway Co.'s Responses To The First Set Of Interrogatories And Production Requests Of SF&L Railway, Inc., Kern W. Schumacher And Morris H. Kulmer" in the Finance Docket No. 33995 and Finance Docket No. 33996 proceedings to be served upon counsel for all known parties of record by first class mail, postage prepaid, or by more expeditious means.

  
Thomas J. Healey

# TROUTMAN SANDERS LLP

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A LIMITED LIABILITY PARTNERSHIP

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Direct Dial: 202-274-2878  
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August 7, 2001

## VIA MESSENGER

Fritz R. Kahn, Esq.  
1920 N Street, NW  
Eighth Floor  
Washington, DC 20036-1601

## VIA MESSENGER

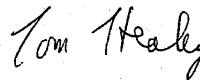
Louis E Gitomer, Esq.  
Ball Janik LLP  
1455 F Street, NW - Suite 225  
Washington DC 20005

Re: Finance Docket No. 33995  
*SF&L Railway, Inc.--Acquisition And Operation Exemption—  
Toledo, Peoria & Western Railway Corporation—Between La Harpe and Peoria, IL  
and  
Finance Docket No. 33996  
Kern W. Schumacher and Morris H. Kulmer—  
Continuance In Control Exemption--SF&L Railway, Inc.*

Gentlemen:

I am enclosing documents referenced in Keokuk Junction Railway Co.'s discovery responses, served on you last night via facsimile. Please contact me if you have any questions.

Very truly yours,



Thomas J. Healey

cc: Jonathan L. Kazense, Esq. (VIA MAIL)  
Gordon P. MacDougall, Esq. (VIA MESSENGER)

INTERROGATORY 4(e)

## *Surface Transportation Board* Rail Consumer Assistance Program

### Purpose

Through its Rail Consumer Assistance Program, the Surface Transportation Board (Board) is enhancing its ability to assist individual rail customers and others with railroad-related issues that they have been unable to resolve satisfactorily with the railroads involved. The Board continues to believe that private-sector solutions yield the best results. Rail consumers should first attempt to resolve problems or disputes directly with the railroads involved. Through enhanced access to our informal processes, this program is intended to provide assistance to rail consumers in addressing those issues that cannot be resolved through private negotiations.

Persons seeking assistance may contact the Board using any of the options shown in the panel to the right. In contacting the Board, please provide as much information as possible, including all relevant data and a full description of the issues involved. If documentation is to be provided, please mail or fax that documentation to the Board at the address or fax number provided.

This Rail Consumer Assistance Program is not intended to serve those with case-specific environmental concerns. The Board's Section of Environmental Analysis has instituted separate mechanisms to deal with environmental matters related to transactions subject to the Board's jurisdiction.

The Board hopes that the rail consuming public finds this program useful. We welcome any suggestions for improvement.

### Five ways to contact us

By mail:  
Rail Consumer Assistance  
c/o Office of Compliance and  
Enforcement  
Surface Transportation Board  
1925 K. Street, NW  
Washington, DC 20423-0001

By E-mail:  
[railconsumer@stb.dot.gov](mailto:railconsumer@stb.dot.gov)

By toll free telephone:  
(866) 254-1792

By FAX:  
(202) 565-9011

By clicking below to select and  
complete the feedback form:  
[Select Feedback Form](#)

Updated November 1, 2000

*Send to  
Attn:*

*Mel  
Clemmons*

INTERROGATORY 6(h)

**ATTACHMENT E**

DISCOVERY RESPONSES  
OF  
UTU-IL



Before the  
SURFACE TRANSPORTATION BOARD

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Finance Docket No.33395

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION  
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--  
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No.33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
--CONTINUANCE IN CONTROL EXEMPTION--  
SF&L RAILWAY, IL.

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DISCOVERY RESPONSES BY CITY OF MACOMB,  
COUNTY OF McDONOUGH, AND JOSEPH C. SZABO

---

LINDA A. O'BRIEN  
City Attorney  
P.O. Box 377  
Macomb, IL 61455

WILLIAM E. PONCIN  
State's Attorney for  
McDonough County  
County Courthouse  
Macomb, IL 61455

GORDON P. MacDOUGALL  
1025 Connecticut Ave., N.W.  
Washington DC 20036

Attorneys for Petitioners

August 6, 2001

Before the  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No.33395

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION  
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--  
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No.33996

KERN W. SCHUMACHER AND MORRIS H. KULMER  
--CONTINUANCE IN CONTROL EXEMPTION--  
SF&L RAILWAY, IL.

---

DISCOVERY RESPONSES BY CITY OF MACOMB,  
COUNTY OF McDONOUGH, AND JOSEPH C. SZABO

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City of Macomb, County of McDonough, and Joseph C. Szabo,<sup>1/</sup>  
(petitioners) make these responses to the discovery requests,  
served July 20, 2001, by SF&L Railway, Inc., Kern W. Schumacher  
and Morris H. Kulmer (together "applicants"), made separately upon  
(1) City of Macomb, (2) County of McDonough, and (3) Joseph C.  
Szabo.<sup>2/</sup>

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<sup>1/</sup> Illinois Legislative Director for United Transportation Union,  
with offices at 8 So. Michigan Avenue, Chicago, IL 60603; particip-  
ation is on behalf of United Transportation Union-Illinois Legisla-  
tive Board (UTU-IL).

<sup>2/</sup> Discovery also was served July 20, 2001 upon Keokuk Junction  
Railway.

#### GENERAL RESPONSES

1. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

2. Where objections have been raised to the scope of the request or interrogatory, petitioners are willing to discuss searching for and producing documents or information covered by a more limited request or interrogatory, taking into account the stated objection.

#### GENERAL OBJECTIONS

1. Petitioners object to production of, and are not producing, information or documents that are protected by privilege, including privileges pertaining to attorney client communications, work product doctrine, and joint defense communications.

2. Petitioners object to production of, and are not producing, public documents or information that are readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), U.S. Department of Labor, or any other government agency or court, or that have appeared in newspapers or other public media.

3. Petitioners object to production of, and are not producing, information which is readily available from Toledo, Peoria and Western Railway Corporation (TPW), a rail carrier party to the proceeding and which is aligned with applicants.

4. Petitioners object to applicants' discovery requests in toto in that discovery is to be completed 30 days after a petition to revoke is filed; petitioners filed their petition to revoke on May 18, 2001, and applicants replied to that petition on June 7,

2001; moreover, petitioners on May 18, 2001, sought discovery from applicants, and applicants responded on June 1, 2001, as supplemented June 12, 2001. Any right to discovery by applicants on July 20, 2001, has long been waived, and is most untimely under the STB's rules and practice.

5. Petitioners object to the production of, and are not producing, information or documents to the extent it is sought in a form not maintained by petitioners in the regular course of business and is not readily available in the form requested, on the ground that such documents' or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which petitioners object to performing.

#### INTERROGATORIES

##### A. City of Macomb and County of McDonough.

1. How many businesses tendering or receiving freight shipments, i.e., manufacturing plants, distribution centers, warehouses, grain elevators or other industries, are located in the City (the County)?

Response: The City objects to this interrogatory. The City does not maintain data which would indicate the number of such businesses in the City, and it would be unduly burdensome for the City to conduct a special study. See: General Objection No. 5.

The County objects to this interrogatory. The County does not maintain data which would indicate the number of such businesses, and it would be unduly burdensome for the County to conduct a special study. See: General Objection No. 5.

2. How many such businesses are situated on the lines of, and are served by, the TP&W?

Response: The City objects to this interrogatory. This is a TP&W matter. The City does not maintain data which would indicate the number of such businesses, and it would be unduly burdensome for City to conduct a special study. Although the City is not directly served by TP&W, it is believed that businesses situated in Macomb may tender or receive shipments at TP&W stations or sidings located outside the City. City has not made a special study of such TP&W business, and such a study would be unduly burdensome. See also: General Objection Nos. 3 & 5.

The County objects to this interrogatory. This is a TP&W matter. The County does not maintain data which would indicate the number of such businesses, and it would be unduly burdensome for County to conduct a special study. The County is directly served by TP&W. See also: General Objection Nos. 3 & 5.

3. How many such businesses contacted the City (County) concerning the sale to SF&L of TP&W's Peoria-to-LaHarpe railroad line, identifying the name, address, telephone number and name of president or chief executive officer of each?

Response: The City is without information as to the number of "such businesses" that may have contacted City concerning the sale. The subject had been covered in the local media, with the City Council deciding to participate in the STB proceedings.

The County is without information as to the number of "such businesses" that may have contacted County concerning the sale.

4. How many carloads of revenue freight did each of such businesses tender to or receive from the TP&W in each of the years 1998, 1999, 2000 and the first six months of 2001?

Response: The City objects to this interrogatory. This is a TP&W matter. The City does not maintain data concerning TP&W

revenue freight for such businesses, and it would be unduly burdensome for City to attempt a special study. See also: General Objection Nos. 3 & 5, and prohibitions concerning disclosure. 49 U.S.C. 11904(a)(2).

The County objects to this interrogatory. This is a TP&W matter. The County does not maintain data concerning TP&W revenue freight for such businesses, and it would be unduly burdensome for County to attempt a special study. See also: General Objection Nos. 3 & 5, and prohibitions concerning disclosure. 49 U.S.C. 11904(a)(2).

5. Was the City (County) contacted by telephone, mail or personal visit by Mr. Joseph C. Szabo, another representative of the United Transportation Union or employee of the TP&W and, if so, what did he or she say about the sale to SF&L of TP&W's Peoria-to-La Harpe railroad line?

Response: City was contacted by Joseph C. Szabo in late February or early March 2001 by telephone with Mayor Thomas C. Carper. Mr. Szabo advised his attorney would furnish STB filings.

County was not contacted by any of the persons named in the interrogatory.

6. Was the City (County) contacted by telephone, mail or personal visit by Mr. Joseph C. Szabo, another representative of the United Transportation Union or employee of the TP&W and, if so, what did he or she say about A&K Railroad Materials, Inc., and acquisitions and abandonments of its affiliated railroads?

Response: City was contacted by Joseph C. Szabo in late February or early March 2001 by telephone with Mayor Thomas C. Carper. City does not recall specific mention of A&K Railroad Materials, Inc. during the conversation.

County was not contacted by any of the persons named in the interrogatory.

#### DOCUMENT REQUESTS

1. Produce all documents identified in response to the interrogatories set forth above.

Response: There are no documents identified, other those in the STB's public file.

2. Produce all documents relied upon in the preparation of the responses to the interrogatories above set forth.

Response: There are no documents relied upon.

B. JOSEPH C. SZABO.

#### INTERROGATORIES

1. How many persons worked on TP&W's Peoria-to-La Harpe railroad line in each of the years 1998, 1999, 2000 and the first six months of 2001?

Response: Joseph C. Szabo objects to the interrogatory. This is a TP&W matter. See: General Objection No. 3. Moreover, Joseph C. Szabo lacks sufficient information as to the number of persons working on the involved line for any of the periods; further, work may be performed for the line at locations distant from the line, such as train dispatching, signalling, car repairs, etc.

2. How many of those persons were or are members of the United Transportation Union?

Response: Joseph C. Szabo objects to the interrogatory. See response to 1, above. He lacks sufficient information as to the number of persons working "on the line" and to the number of those who were or are UTU members.

3. Are those persons who were or are members of the UTU members of a single local or other unit, and, if not, how are they organized?

Response: UTU members employed by TP&W belong to Local 198; however, to the extent other carriers operate on a portion of the line, they may be members of other local units.

4. How is each local or other unit of the UTU governed, i.e., by its officers or by an executive committee?

Response: Joseph C. Szabo objects to the interrogatory. The UTU Constitution is on file and available to the general public at the US Department of Labor. See: General Objection No. 2.

5. How are the officers or executive or executive committees appointed or elected?

Response: Same response as to No. 4, above.

6. How are the views of the members of each local or other unit of the UTU on issues, such as the effect upon them of the sale to SF&L of the TP&W's Peoria-to-La Harpe railroad line solicited, i.e., are meetings held to discuss the issues, are ballots mailed to the members to vote on the issues or how otherwise are expressions of their sentiments secured.

Response: Meetings are held monthly. There are also informal methods of communication, such as mail, telephone, FAX, etc. Although balloting may occur, such is unusual for local issues.

7. What, if any, actions did each local or other unit of the UTU take with respect to the effect upon the members of UTU of the sale to SF&L of TP&W's Peoria-to-La Harpe railroad line?

Response: No action was taken by Local 198 or any other local.

8. How, if at all, did each local or other unit of the UTU communicate its actions with respect to the effect upon the members of the UTU of the sale to SF&L of TP&W's Peoria-to-La Harpe railroad line to Mr. Joseph C. Szabo?



Response: Local 198 did not take action, and did not communicate any action to Joseph C. Szabo.

9. By what authority is Mr. Joseph C. Szabo authorized to speak on behalf of each of the locals or other units of the UTU representing the UTU membership working on the TP&W's Peoria-to-La Harpe railroad line?

Response: Mr. Joseph C. Szabo was not authorized to speak on behalf of Local 198, or any other local, in this matter. He is authorized, as Illinois State Legislative Director for UTU, to represent the UTU's Illinois Legislative Board, and the UTU membership, under the UTU Constitution. See: United Transp. Union v. ICC, 891 F.2d 908, 909 n.1 (D.C. Cir. 1989); Simmons v. ICC, 909 F.2d 186, 187 n.1 (7th Cir. 1990); Redden v. ICC, 956 F.2d 302, 306 n.5 (D.C. Cir. 1992).

10. What has been the effect upon the UTU membership working of the TP&W's Peoria-to-La Harpe railroad line of the rerouting of the overhead container trains and the interchange with BNSF at Galesburg instead of Ft. Madison?

Response: The interrogatory contains some erroneous assumptions and misstatements. The effect upon UTU membership is not merely upon those working on the involved line but, due to displacement by exercise of seniority, also upon TP&W employees working off the involved line. The container trains are not "overhead" to the TP&W system, and are not solely "container" trains. Moreover, the interchange technically is at Peoria, not Galesburg, for TP&W handles the traffic in haulage for the account of BNSF over BNSF's line between Peoria and Galesburg.

The impact upon UTU-represented employees is described in the verified statement of Randal L. Brandt, filed May 18, 2001, and in the TP&W letter to Illinois Department of Transportation, dated January 22, 2001. This information will be updated in petitioners'

supplement to their petition to revoke, scheduled for August 21, 2001.

11. What has been the effect upon the UTU membership working on TP&W's Peoria-to-Galesburg railroad line of the rerouting of the overhead container trains and the interchange with BNSF at Galesburg instead of Ft. Madison?

Response: See response to No. 10, above.

12. What, if any, protection is afforded by the labor-management agreements between UTU and TP&W to those UTU members who may have been adversely affected by the rerouting of the overhead container trains?

Response: Subject to the erroneous assumptions and misstatements described in No. 10, above, there are no protective conditions of which Joseph C. Szabo is aware.

13. What, if any, protection is afforded by the labor-management agreements between UTU and TP&W to those UTU members who may be adversely affected by the sale to SF&L TP&W's Peoria-to-La Harpe railroad line?

Response: There are no protective conditions of which Joseph C. Szabo is aware.

14. What, if any, protection is afforded by the labor-management agreements between UTU and TP&W to those members who may be adversely affected by the discontinuance of service by TP&W serving as the contract operator for SF&L on the Peoria-to-La Harpe railroad line?

Response: There are no protective conditions of which Joseph C. Szabo is aware.

15. What, if any, protection is afforded by the labor-management agreements between UTU and TP&W to those members who may be adversely affected by the abandonment by SF&L of the Peoria-to-La Harpe railroad line?

Response: There are no protective conditions of which Joseph C. Szabo is aware.

16. Did Mr. Joseph C. Szabo, another representative of the United Transportation Union or employee of the TP&W have any communications with The Burlington Northern and Santa Fe Railway Company about the rerouting of the overhead container trains and the change in the interchange from Ft. Madison to Galesburg, and, if so, how, when, where and with whom were such communications and what was the substance of the exchange between the parties?

Response: Joseph C. Szabo did not have any such communications, and is not aware of any communications by UTU representatives or TP&W employees.

#### DOCUMENT REQUESTS

1. Produce all documents identified in response to the interrogatories set forth above.

Response: There are no documents identified, other than the UTU Constitution, which is objected to. See: General Objection No.

2.

2. Produce all documents relied upon in the preparation of the responses to the interrogatories above set forth.

Response: There are no documents relied upon.

08/05/01 10:37 2312 236 8209  
08/06/01 11:37 FAX 202 37 8343  
08/06/2001 10:42 389-837-152

ALL LEG ED  
G P MACDOUGALL  
MACOMB CITY ATTOR

PAGE 02 001

VERIFICATION

Under the penalties of perjury, I affirm that the foregoing responses by City of Macomb are true and correct as stated.

Dated: 8-02-01

Thomas C. Lough  
1177 Wayne, 11774 Com B Delmaris

VERIFICATION

Under the penalties of perjury, I affirm that the foregoing responses by County of McDonough are true and correct as stated.

Dated: 8/6/01

Patrick M O'Brien  
Patrick M O'Brien, ASA

VERIFICATION

Under the penalties of perjury, I affirm that my foregoing responses are true and correct as stated.

Dated: 8/6/01

Joseph C. Szabo  
JOSEPH C. SZABO

08/06/01 11:29 TX/RX NO.3362 P.002

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08/06/01 11:40 TX/RX NO.3366 P.001